(4

THE COMMON-WEALTH OF ENGLAND, AND THE MANER OF Gouernement thereof.

COMPILED BY THE HONOVRABLE Sir THOMAS SMITH, Knight, Doctor of both Lawes, *and one of the principall Secretaries vnto two most worthy* Princes, King EDWARD, and Queene ELIZABETH.

With new Additions of the chiefe Courts in ENGLAND, *And the Offices thereof by the said Author. Also a Table* added thereto, of all the principall matters contained in this Treatise.

Newly Corrected and Amended.

LONDON
Printed by *William Stansby* for *Iohn Smethwicke*, and are to be sold at his Shop in S. *Dunstanes* Church-yard, vnder the Dyall. 1621.

THE COMMON-WEALTH OF ENGLAND,

AND THE MANER OF Government thereof,

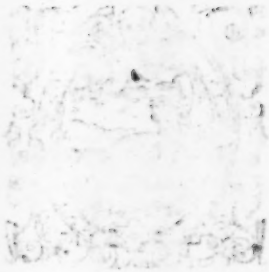
COMPILED BY THE CONVERABLE Fr[illegible] Doctor of both Lawes,

[illegible]

[illegible]

Vi[illegible] Addition of the Chaire Courses in ENGLAND, [illegible] said Author. Use a Table [illegible] in this Treatise.

Newly Corrected and Amended.



LONDON

Printed by William Stansby for Iohn Smethwicke, and are to be sold at his Shop in S. Dunstanes Church-yard, under the Dyall. 1621.

To the Reader.

TO conceale the graces inſpired by God, or the gifts ingraffed by nature, or the vertues atchieued vnto our ſelues by induſtrie, in all age, and of all wiſe men, was accounted vndutifulneſſe, vnkindneſſe, and impietie vnto that Commonwealth, in the which, and vnto the which we are both bred and borne: but to ſuppreſſe the worthy workes of any Authour, may iuſtly bee iudged not onely iniurie to the perſon, but euen enuie at the whole world. Wherefore, chauncing vpon this ſhort diſcourſe compiled by the Honorable Knigh Sir Thomas Smith, and conſidering that the ſame could not but bee a great light to the ignorant, and no leſſe delight vnto the learned in the Laws and Policie of ſundrie Regiments: I thought it part of my dutie, as well for the reuiuing of the fame of ſo notable a man, as for the publike imparting of ſo pithie a Treatiſe, to preſent the ſame vnto thy indifferent & diſcreet iudgment. Wherein, although the errors and raſhnes of ſcribes, appearing in the contrarietie, and corruption of Coppies, happning both by the length of time ſince the firſt making, as alſo by the often tranſcripting, might iuſtly haue been mine excuſe, or rather diſcharge: yet weighing the authorie of the Au-

ther together with the gramitie of the matter, I made no doubt but that the reuerence due vnto the one, and the recompence deſerued by the other, would eaſily counteruaile all faults committed by a Clarke and writer. And whereas ſome termes or other matters may ſeeme to diſſent from the vſuall phraſe of the common lawe of this Realme: notwithſtanding, to him that will conſider that the profeſſion of the maker was principally in the ciuill lawes, and therefore not to be exſpected as one excellent in both, & alſo that the finiſhing of this worke was in Fraunce, farre from his Librarie, and in an ambaſſage, euen in the midſt of waighty affaires, it cannot, nor ought not without great ingratitude be diſpleaſant, or in any ſort diſliking. Wherefore (gentle Reader) accept in good part my Zeale, and this honourable mans trauaile, aſſuring thy ſelfe that the ſame framed by an expert workmaſter, and forged of pure and excellent mettall, will not faile in proouing to be a commodious inſtrument.

Vale.

A Table of all the principall matters *contained in this Booke.*

THE FIRST BOOKE.

CHAP. I.

OF the diuerſities of Common-wealths, or Gouernemant. Pag. 1.

2 What is iuſt or Lawe in euery Common-wealth or Gouernement. Page. 2.

3 Another diuiſion of Common-wealths. Pag. 3.

4 Examples of changes in the manner of Gouernement. Pag. 3.

5 Of the queſtion what is right and iuſt in euery Common-wealth. Pag. 5.

6 That Common-wealths or Gouernements, are not moſt commonly ſimple, but mixt. Pag. 5.

7 The definition of a King, and of a Tyrant. Pag. 6.

8 Of the abſolute King. Pag. 7.

9 Of the name of King, and the Adminiſtration of England. Pag. 9.

10 What is a Common-wealth, and the parts thereof. Pag. 11.

11 The firſt ſort, or beginning of a Houſe or Family, called οἰκονομία. Pag. 12.

12 The firſt and naturall beginning of a Kingdome, called in Greeke βασιλεία. Pag. 14.

13 The firſt and naturall beginning of the rule of a fewe of the beſt men, called in Greeke ἀριστοκρατία. Pag. 15.

14 The firſt originall, or beginning of the multitude, called

called πολιτεία, or Δημοκρατία. Pag. 16.
15 That the Common-wealth or Policie, must be according to the nature of the people. Pag. 17.
16 The diuisions of the parts and persons of the Common-wealth. Pag. 19.
17 Of the first part of the Gentlemen of England, called *Nobilitas Maior*. Pag. 21.
18 Of the second sort of Gentlemen which may bee called *Nobilitas Minor:* and first of Knights. Pag. 22.
19 Of Esquires. Pag. 26.
20 Of Gentlemen. Pag. 27.
21 Whether the maner in making Gentlemen so easily is to be allowed. Pag. 29.
22 Of Citizens, Burgesses and Yeomen. Pag. 30.
23 Of the fourth sort of men which do not rule. Pag. 33.

THF SECOND BOOKE.

CHAP. I.

THe diuision and definition of the Lawes of this Realme in generall. Pag. 35.
2 Of the Parliament and the authoritie therof. Pag. 36.
3 The forme & maner of holding the Parliament. Pa. 38
4 Of the Monarch, King, or Queene of England. Pa. 46.
5 The chiefe points wherein one Commonwealth doth differ from another. Pag. 50.
6 Of three manners and formes of trials or Iudgements in England. Pag. 51.
7 Triall of Iudgement by Parliament. Pag. 51.
8 Triall of Iudgement by Battell. Pag. 51.
9 Triall of Assise or twelue men; and first of the three parts

which be neceſſary in Iudgemens. Pag.52.
10 Of Pleas or Actions. Pag.53.
11 Of the chiefe Tribunals, Benches, or Courts of England. Pag.54.
12 Of the times of pleading called Termes: and of the Chancelour and Chancerie. Pag.55.
13 Of Iudges in the Common Law of England, the manner of tryall and pleading there. Pag.60.
14 The Kings Bench. Pag.60.
15 Of the Court of Common-pleas. Pag.63.
16 Of the two manner of Iſſues. Pag.67.
17 Of the Sherife of the ſhire, and of the Court of Exchequer. Pag.69.
18 Of the twelue men. Pag.73.
19 Of the parts of ſhires called Hundreds, Lathes, Rapes and Wapentakes. Pag.75.
20 Of the Court Baron. Pag.76.
21 Of the Leete or Law day. Pag.78.
22 Of the proceedings of cauſes criminall, and firſt of the Iuſtices of Peace. Pag.79.
23 Of Hue and Cry, and Recogniſance taken vpon them that may giue euidence. Pag.83.
24 Of the Coroner. Pag.84.
25 Of the Conſtables. Pag.85.
26 Of the Seſſions of Gayle-deliuery, and the definitiue proceedings in cauſes criminall. Pag.87.
27 Certaine Orders peculiar to England, touching puniſhments of Malefactors. Pag.95.
28 Of Treaſon, and the Tryall which is vſed for the higher Nobilitie and Barons. Pag.68.

THE THIRD BOOKE.

CHAP. I.

OF that which in other Countries is called Appellation, or Prouocation, to amend iudgement, or ſentence definitiue, which is thought vniuſtly giuen in cauſes criminall. Pag.99.

2 What remedie is, if the ſentence be thought vniuſtly giuen. Pag.101.

3 Of that which in England is called Appeale, in other places Accuſation. Pag.103.

4 The Court of Starre-chamber. Pag.105.

5 Of the Courts of Wards and Liueries. Pag.109.

6 The Dutchie Court. Pag.114.

7 The Court of Requeſts. Pag.116.

8 Of Wines and Marriages. Pag.117.

9 Of children. Pag.121.

10 Of Bondage, and Bondmen. Pag.123.

11 Of the Court which is Spirituall or Eccleſiaſticall. And in the Booke of Law, Court Chriſtian. *Curia Chriſtianitatis.* Pag.131

THE

THE MANNER OF GOVERNMENT Or Policie of the Realme of ENGLAND.

CHAP. I.

Of the diuerſities of Common-wealths or Gouernments.

THey that haue written heretofore of Commonwealths, haue brought them into three moſt ſimple and ſpeciall kinds or faſhions of Gouernment. The firſt, where one alone doth gouerne, is called of the Grækes Μοναρχία; The ſecond, where the ſmaller number, commonly called of them Ἀριſτοκρατία; and the third, where the multitude doth rule, Δημοκρατία. To rule is vnderſtood to haue the higheſt and ſupreame Authoritie of commandement. That part or member of the Commonwealth is ſaid to rule, which doth controll, correct, and direct all other members of the Common-wealth. That part which doth rule, define and command according to the forme of the gouernment, is taken in euery Com-

Democrat. Monarchia. Ariſtocratia.

mon-wealth to bee iuſt and Law: As a rule is alway to be vnderſtood to be ſtraight, and to which all worꝛkes are to be conforꝛmed, and by it to be iudged: I do not meane the Lesbians rule, which is conforꝛmed to the ſtone: but the right rule whereby the Artificer and the Architect do iudge the ſtraightneſſe of euery mans worꝛke, hee to bee reckoned to make his worꝛke perfecteſt, who goeth neereſt to the ſtraightneſſe.

Chap. II.

What is iuſt or Law in euery Common-wealth or Gouernment.

NOw it doth appeare, that it is profitable to euerie Common-wealth (as it is to euery thing generally and particularly) to bee kept in her moſt perfect eſtate. Then if that part which doth beare the rule, doe command that which is profitable to it, and the commandement of that part which doth rule on that ſoꝛt, is to be accepted in euery Common-wealth reſpectiuely to be iuſt (as wee haue ſaid beforꝛe) it muſt needes follow, that the definition which Thraſimachus did make, that to be iuſt, which is the profit of the ruling and moſt ſtrong part (if it be meant of the Citie oꝛ Common-wealth) is not ſo far out of the way, if it be ciuilly vnderſtood, as Plato would make it. But as there is profit, and likelihood of profit, ſo there is right and likelihood of right. And as well may the ruling & ſouereigne part command that which is not his profit, as the iuſt man may offend (notwithſtanding his iuſt & true meaning) when he wold amend that which is amiſſe, and helpe the Common-wealth, and to do good vnto it. Foꝛ in as much as hee attempteth to doe contrary to the Law which is alreadie put, hee therefoꝛe by the Law is iuſtly condemned, becauſe his doing is contrarie to the

Iuſt.

to the Law and the Ordinance of that part which doth command.

Chap. III.

Another Diuision of Common-wealths.

But this matter yet taketh another doubt: for of these manner of rulings by one, by the fewer part, and by the multitude or greater number, they which haue more methodically and more distinctly & perfitly written vpon them, doe make a subdiuision: and diuiding each into two, make the one good and iust, and the other euill and vniust: as, where one ruleth, the one they call a King, or Βασιλεύς, the other τύραννον, a Tyrant: where the fewer number, the one they name a gouerning of the best men Αριστοκρατίαν or Remp. Optimatum, the other of the vsurping of a few Gentlemen, or a few of the richer and stronger sort, ὀλιγαρχίαν, or Paucorum Potestatem: and where the multitude doth gouerne, the one they call a Common-wealth by the generall name πολιτείαν, or the rule of the people Δημοκρατία, the other, the rule or the vsurping of the popular, or rascall or vilest sort, because they bee most in number, Δημοκρατίαν ἀκρατῆ.

Chap. IV.

Examples of changes in the manner of Gouernment.

In Common-wealths which haue had long continuance, the diuersities of times haue made all these manners of ruling or Gouernment to bée séene: as in Rome, Kings Romulus, Numa, Servius, tyrants, Tarquinius, Sylla, Cesar: the rule of best men, as in time when the first Consuls were: and the vsurping of a few, as of the Senators after the death of Tarquinius, and before the succession of the

the Tribunate, and manifeſtly in the Decem-virate, but more pernitiouſly in the Triumvirate of Cæſar, Craſſus, & Pompeius: and afterward in the Triumvirate of Octauius, Antonius, and Lepidus: The Common-wealth and rule of the people, is in the expulſing of the Decemviri, & long after, eſpecially after the Law was made, eyther by Horatius, or (as ſome would haue it) Hortenſius quod plebs ſciuerit, id populum teneat: And the ruling & vſurping of the popular & raſcal, as a little before Sylla his reigne, and a little before Caius Cæſars Reigne. For the vſurping of the Raſcality can neuer long endure, but neceſſarily breedeth, and quickly bringeth forth a Tyrant. Of this hath Athens, Siracuſe, Lacedemon, and other old ancient ruling Cities had experience, and a man need not doubt but that other Common-wealthes haue followed the ſame rate. For the nature of man is, neuer to ſtand ſtill in one manner of eſtate, but to grow from the leſſe to the more, and decay from the more againe to the leſſe, till it come to the fatall end and deſtruction, within any turnes, and turmoyles of ſickneſſe, and recouering, ſeldome ſtanding in a perfect health neither of a mans bodie it ſelfe, nor of the politicke body which is compact of the ſame.

Chap. V.

Of the queſtion what is right and iuſt in a Common-wealth.

SO when the Commonwealth is euill gouerned by an euill ruler and vniuſt (as in the three laſt named which bee rather a ſickneſſe of the politicke bodie, than perfect and good Eſtates) if the Lawes be made, as moſt like they be alwaies, to maintaine that Eſtate: the queſtion remaineth, whether the obedience of them be iuſt, and the diſobedience wrong: the profit & conſeruation of that Eſtate

Right

Right and Juſtice, or the diſſolution? and whether a good & vpright man, and louer of his Countrey ought to maintaine and obey them, or to ſeeke by all meanes to aboliſh them? which great and haughty courages haue often attempted: as Dion to riſe vp againſt Dionyſius; Thraſibulus againſt the thirty Tyrants; Brutus and Caſſius againſt Cæſar, which hath bin cauſe of many cõmotions in Common-wealths: whereof the iudgement of the common people is according to the euent & ſucceſſe: of them which be learned according to the purpoſe of the doers, and the eſtate of the time then preſent. Certaine it is, that it is alwayes a doubtfull and hazardous matter to meddle with the changing of Lawes and Gouernment, or to diſobey the orders of the Rule or Gouernment, which a man doth find already eſtabliſhed.

Chap. VI.

That Common-wealths or Gouernments are not moſt commonly ſimple, but mixt.

NOw although the Gouernments of Common-wealths bee thus diuided into three, and cutting each into two, ſo into ſixe: yet you muſt not take that yee ſhall finde any Common-wealth or Gouernment ſimple, pure, and abſolute in his ſort and kinde, but as Wiſe men haue diuided for vnderſtandings ſake, and fantaſied foure ſimple bodies which they call Elements: as fire, ayre, water, earth, and in a mans body foure complexions or temperatures, as cholericke, ſanguine, flegmatique and melancholicke: not that yee ſhall finde one vtterly perfect without mixtion of the other, for that Nature almoſt will not ſuffer: but vnderſtanding doth diſcerne each nature as in his ſincerity: ſo ſeldome or neuer ſhall you find Common-wealths or gouernments which

are

are absolutely and sincerely made of any of them aboue named, but alwayes mixed with another, and hath the name of that which is more, and ouer-ruleth the other alwayes or for the most part.

Chap. VII.

The definition of a King, and a Tyrant.

WHere one person beareth the rule, they define that to be the state of a King, who by succession or election commeth with the good will of the people to that Gouernment, and doth administer the Common-wealth, by the Laws of the same, and by equity, and doth séeke the profit of the people as much as his owne. A Tyrant they name him, who by force commeth to the Monarchie against the will of the people, breaketh Lawes already made, at his pleasure, maketh other without the aduice and consent of the people, and regardeth not the wealth of his Commons, but the aduancement of himselfe his faction and kindred. These definitions doe contayne three differences: the obtayning of the authoritie the manner of administration thereof, and the Butt or Marke whereunto it doth tend and shoote. So as one may be Tyrant by his entry and getting of the Gouernment, and a King in the administration thereof. As a man may thinke of Octauius, and peraduenture of Sylla: For they both comming by tyranny and violence, to that state, did séeme to trauaile very much for the better order of the Common-wealth: howbeit, either of them after a diuers manner. Another may be a King by a entry and a Tyrant by administration, as Nero, Domitian, and Commodus: for the Empire came to them by succession. But their administration was bitterly tyrannicall, of Nero after fiue yéeres, of Domitian and Commodus very shortly vpon their new honour. Some both in the comming

ming to their Empire, & in the Butt the which they shoot at, be Kings, but the manner of their ruling is tyrannicall, as many Emperors after Cæsar and Octauius, and many Popes of Rome. The Emperours clayme this tyrannicall power by pretence of that Rogation or Plebiscitum, which Caius Cæsar or Octauius obtained, by which all the people of Rome did conferre their power and authority vnto Cæsar wholy.

The Pope groundeth his from Christ (cui omnis potestas data est in cœlo & in terra) whose Successor hee pretendeth to be: yet the generall Councels make strife with him, to make the Popes power either Aristocratiam, or at the least legittimum regnum, and would faine bridle that absolutam potestatem. Some men doe iudge the same of the kings of France and certaine Princes of Italy, and other place, because they make and abrogate Lawes and Edicts, lay on Tributes and Impositions of their owne will, or by the priuate counsell and aduice of their friends and fauourers onely, without the consent of the people. The people I call that which the word Populus doth signifie, the whole bodie, and the three Estates of the Common-wealth: and they blame Lewes the xi. for bringing the administration Royall of France, from the lawfull and regulate Reigne, to the absolute and tyrannicall Power and Gouernment. He himselfe was wont to glory and say, he had brought the Crowne of France, hors de page, as one would say, out of Wardship.

Chap. VIII.

Of the absolute King.

Other doe call that kinde of administration which the Greeks do call παμβασιλείαν, not tyranny, but the absolute power of a King, which they would pretend that euery King hath, if hee would vse the same. The o-

ther they call βασιλείαν ἡμένην, or the Royal power Reggulate by Lawes: of this I will not dispute at this time. But as such absolute administration in time of Warre, when all is in Armes, and when Lawes hold their peace, because they cannot bee heard, is most necessary: so in time of peace the same is very dangerous, as well to him that doth vse it, and much more to the people vpon whom it is vsed: whereof the cause is the frailty of mans nature, which (as Plato saith) cannot abide or beare long that absolute and vncontrolled authoritie, without swelling into too much Pride and Insolencie. And therefore the Romanes did wisely, who would not suffer any man to kepe the Dictatorishp aboue sixe moneths, because the Dictators (for that time) had this absolute power, which some Grekes named a lawfull tyranny for a time. As I remember, Aristotle, (who of all Writers hath most absolutely & methodically treated of the diuision and natures of Common-wealths) maketh this sort of Gouernment to bee one kinde of Kings. But all commeth to one effect: for at the first all Kings ruled absolutely, as they who were either the heads and most ancient of their Families, deriued out of their owne bodies, as Adam, Noe, Abraham, Iacob, Esau, reigning absolutely ouer their owne children & bondmen, as reason was: or else in the rude world amongst barbarous & ignorant people, some one then, whom God had endued with singular wisdome, to inuent things necessary for the nourishment & defence of the multitude, & to administer Iustice, did so farre excell other, that all the rest were but beasts in comparison of him: and for that excellency, willingly had this authority giuen him of the multitude, and of the Gentiles when he was dead, and almost when hee was yet liuing, was taken for a God, of others for a Prophet. Such among the Iewes were Moses, Iosh ua, and the other Iudges, as Samuel, &c. Romulus, and Numa, amongst

mongſt the Romanes, Lycurgus and Solon, and diuers others among the Grekes, Zamolxis among the Thracians, Mahomet among the Arabians: And this kinde of rule among the Greeks, is called τύραννις which of it ſelfe at the firſt was not a name odious: But becauſe they who had ſuch rule, at the firſt, did for the moſt part abuſe the ſame, waxed inſolent and proud, iniuſt, and not regarding the Common-wealth, committed ſuch acts as were horrible and odious: As killing men without cauſe, abuſing their wiues and daughters, taking and ſpoyling all mens goodes at their pleaſures, and were not Shepheards as they ought to be, but rather Robbers and Deuourers of the people, whereof ſome were contemners of God, as Dionyſius, other wiſe they liued like Deuils, and would yet be adored and accounted for Gods: as Caius Caligula and Domitian: that kind of adminiſtration, and manner alſo, at the firſt not euill, hath taken the ſignification, and definition of the vice of the abuſers, ſo that now both in Greek, Latine, and Engliſh, a Tyrant is counted he, who is an euill King, and who hath no regard to the wealth of his people, but ſeeketh onely to magnifie himſelfe, and his, and to ſatiſfie his vicious and cruell appetite without reſpect of God, of right, or of the Law: becauſe that for the moſt part, they which haue had that abſolute power, haue bin ſuch.

Chap. IX.

Of the name of King, and the adminiſtration of England.

That which wee call in one ſillable King in Engliſh, the old Engliſhmen, and the Saxons, from whom our tongue is deriued, to this day call in two ſillables, Cyning, which whether it commeth of Cen or Ken, which

betokeneth to know and vnderſtand, or Can, which betokeneth to be able, or to haue power. I cannot tell. The participell abſolute of the one wee vſe yet, as when wee ſay, a cunning man Vir prudens aut ſciens: the verbe of the other, as I can doe this, poſſum hoc facere. By old and ancient Hiſtories that I haue read, I doe not vnderſtand that our Nation hath vſed any other general authority in this Realme, neither Vriſtocratical nor Democratical, but onely the Royall and Kingly Maieſtie which at the firſt was deuided into many & ſundry Kings, each abſolutely raigning in his Country, not vnder the ſubiection of other, till by fighting the one with the other, the ouercommed alwayes falling to the augmentation of the vanquiſher and ouercommer: At the laſt the Realme of England grew into one Monarchie. Neither any one of thoſe Kings, neither he who firſt had all, tooke any Inueſtiture at the hands of the Emperour of Rome, or of any other ſuperiour or forreine Prince, but held of God to himſelfe, and by his Sword, his people and Crowne, aknowledging no Prince on Earth his Superior, and ſo it is kept & holden at this day: Although King Iohn (by the rebellion of the Nobility, aided with the Dolphin of France his power) to appeaſe the Pope, who at that time poſſeſſing the conſcienees of his ſubiects, was then alſo his enemy, and his moſt grieuous torment (as ſome Hiſtories doe witneſſe) did reſigne the Crowne to his Legate Pandulphus, and tooke it againe from him, as from the Pope, by faith and homage, and a certaine tribute yerely. But that act being neither approoued by his people, nor eſtabliſhed by Act of Parliament, was forthwith, and euer ſithence taken for nothing, either to binde the King, his Succeſſors, or Subiects.

Chap. X.

What is a Common-wealth, and the parts thereof.

TO bee vnderſtood hereafter, it is neceſſary yet to make a third diuiſion of the Common-wealth by the parts thereof. A Common-wealth is called a ſociety or Common doing of a multitude of Free-men, collected together, and vnited by common accord and couenants among themſelues, for the conuerſation of themſelues, as well in peace as in warre. For properly an Hoaſt of men is not called a Common-wealth, but abuſiuely, becauſe they are collected but for a time, & for a fact: which done each diuideth himſelfe from others as they were before. And if one man had, as ſome of the old Romans had (if it bee true that is written) fiue thouſand, or ten thouſand bondmen whom he ruled well, though they dwelled all in one Citie, or were diſtributed into diuers Villages, yet that were no Common-wealth: for the bondman hath no communion with his Maſter, the wealth of the Lord is onely ſought for, and not the profit of the ſlaue or bondman. For as they who write of theſe things haue defined, a bondman or ſlaue as it were) ſauing life or humane reaſon) is but the inſtrument of his Lord, as the axe, the ſaw, the cheſſill & gowge is of the Carpenter. Truth it is, the Carpenter looketh diligently to ſaue, correct, & amend all theſe: but it is for his owne profit, and in conſideration of himſelfe, not for the inſtrument ſake. And as theſe be inſtruments of the Carpenter, ſo the Plow, the Cart, the Horſe, Oxe, or Aſſe, be inſtruments of the Husbandman: and though one Husbandman had a great number of all theſe, and looked well to them, it made no Common-wealth, nor could not be ſo called. For the priuate wealth of the Husbandman is only regarded, & there is no mutuall ſociety or portion, nor Law, nor pleading betweene

the one and the other. And (as he saith) what reason hath the Pot to say to the Potter, Why madest thou me thus? or why doest thou breake me after thou hast made me? euen so is the bondman or slaue which is bought for mony, for he is but a reasonable and liuing instrument, the possession of his Lord & Master, reckoned among his goods, not otherwise admitted to the society ciuill, or Common-wealth, but is part of the possession and goods of his Lord. Wherefore, except there be other orders and administrations amongst the Turkes, if the Prince of the Turkes (as it is written of him) doe repute all other his bondmen and slaues (himselfe and his sonnes onely free men) a man may doubt whether his administration bee to bee accounted a Common-wealth, or a Kingdome, or he rather to be reputed onely as one that hath vnder him an infinite number of slaues or bondmen, among whom there is no right, Law, nor Common-wealth compact, but onely the will of the Lord and Segnior. Surely none of the olde Grekes would call this fashion of Gouernment, Remp. or Πολιτείαν for the reasons which I haue declared before.

Chap. XI.

The first sort, or beginning of an House or Family, called οἰκονομία.

Then if this be a Societie, and consisteth onely of free-men, the least part thereof must be two. The naturallest, and first coniunction of two, toward the making of a further society of continuance, is of the husband and of the wife after a diuers sort, each hauing care of the Family, the man to get, to trauaile abroad, to defend; the wife to saue that which is gotten, to tarry at home, to distribute that which commeth of the husbands labour, for the nutritiure of the children and family of them both

and

and to keepe all at home neate and cleane. So nature hath forged each part to his office: the man sterne, strong, bold, aduenturous, negligent of his beauty, and spending. The woman weake, fearefull, faire, curious of her beautie and saving. Either of them excelling other in wit and wisedome, to conduct those things which appertaine to their Office, and therefore where their wisdome doth excell, therein it is reason that each should gouerne. And without this society of man and woman, the kind of man could not long endure. And to this society men are so naturally borne, that the Prince of all Philosophers, in consideration of natures, was not afraid to say, that a man by nature is rather desirous to fellow himselfe to another and so to line in couple, then to adhere himselfe with many. Although of all things, or liuing creatures, a man doth shew himselfe most politicke, yet can hee not well line without the society and fellowship Ciuill. Hee that can liue alone, saith Aristotle, is either a wilde beast in mans likenesse, or else a God rather then a Man. So then the House and Family is the first and most natural (but priuate) apparance of one of the best kindes of a Commonwealth, that is called Aristocratia, where a few, and the best do gouerne: & where not one alwayes, but somtime and in something another doth beare the rule. Which to maintayne for his part, God hath giuen to the man greater wit, bigger strength, and more courage, to compell the woman to obey by reason, or force: and to the woman beauty, faire countenance, and sweet words, to make the man obey her againe, for loue. Thus each obeyeth and commandeth other, and they two together rule the House. The house I call here the man, the woman, their children, their seruants bond and free, their cattle, their houshold-stuffe, and all other things, which are reckoned in their possession, so long as all these remayne together in one, yet this cannot be called Aristocratia, but Me-

Domus, seu Familia.

ta-

taphorice, for it is but an house, and little sparke resembling as it were that Gouernment.

Chap. XII.

The first and naturall beginning of a Kingdome: in Greeke βασιλεία.

But for so much as it is the nature of all things, to encrease or decrease: this house thus increasing & multiplying by generation, so that it cannot wel be comprehended in one habitation, & the children waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the Father and Mother sendeth them out into couples as it were by prouining or propagation. And the Child by mariage beginneth as it were to roote towards the making of a new stock, and thereupon another House or Family. So by this propagation or prouining first of one, and then of another, and so from one to another, in space of time of many Houses was made a Strét or Village: of many Stréts and Villages ioyned together, a Citie or Borough. And when many Cities, Boroughs, and Villages, were by common and mutuall consent for their conuersation ruled by that one & first father of them all, it was called a Nation or Kingdome. And this séemeth the first and most naturall beginning and source of Cities, Townes, Nations, Kingdomes, and of all ciuill Societies. For so long as the great Grandfather was aliue and able to rule, it was vnnaturall for any of his sonnes or of-spring, to striue with him for the superiority, or to goe about to gouerne, or any wise to dishonour him, from whom he had receiued life and being. And therefore such a one doth beare the first and naturall example of an absolute, and perfect King. For he loued them as his owne Children and Nephewes, cared for them as members of his

Prouining, or propagation is when a man layeth a brāch of a Vine or Osier, or any other tree into the ground so that it taketh root of it selfe, and may liue though it be cut clean from the first roote or stock, *Pagus, Oppidum, Ciuitas, Regnum.*

his owne body, prouided for them as one hauing by long time more experience then any one, or all of them. They againe honoured him as their father of whose bodie they came, obeyed him for his great wisedome and fore-caſt, went to him in doubtfull caſes, as to an Oracle of God, feared his curſe and malediction as proceeding from Gods owne mouth. He againe did nouriture: For each paine put vpon them, hee eſteemed as laide vpon himſelfe.

Chap. XIII.

The firſt and naturall beginning of the rule of a few of the beſt men, called in Greeke Αριστοκρατία.

But when that great Grand-father was dead, the ſonnes of him, and brethren amongſt themſelues, not hauing that reuerence to any, nor confidence of wiſdome in any one of them, nay that truſt the one to the other, betweene whom (as many times it fareth with Brethren) ſome ſtrifes and brawlings had before ariſen: To defend themſelues yet from them which were Welch & ſtrangers; neceſſarily agreed among themſelues to conſult in common, & to beare rule for a time in order, now one: & now another: ſo that no one might beare alwayes the rule, nor any one be neglected. And by this meanes, if any one failed during his yeare or time by ignorance, the next (being either wiſer of himſelfe, or elſe by his brothers error and fault) amended it. And in the meane while, at diuers and moſt times when vrgent neceſſitie did occurre, they conſulted all thoſe heads of Families together within themſelues, how to demeane and order their matters beſt for the conſeruation of themſelues, & each of their Families generally and particularly. Thus a few being heads, & the chiefe of their Families, equall in Birth and Nobility, and not much different in riches,

gouerned their own houſes, and the deſcendants of them particularly, and conſulted in common vpon publike cauſes, agréing alſo vpon certaine Lawes & Orders to be kept amongſt them. So the beſt, chiefeſt, and ſageſt did rule, and the other part had no cauſe to ſtriue with them, nor had no cauſe nor apparance to compare with any of them, neither for age nor diſcretion, nor for riches or Nobilitie. The Rulers ſought each to kéepe and maintayne their Poſterity, as their Sonnes and Nephewes, and ſuch as ſhould ſucceed them, and carry their names when they were dead, and ſo render them being mortall by nature, immortall by their fame and ſucceſſion of poſterity: hauing moſt earneſt care to maintaine ſtill this their couſinage and common Family, as wel againſt forreine and barbarous Nations, which were not of their Progeny, Tongue, or Religion, as againſt wild and ſauage beaſts. This ſéemeth the naturall courſe and beginning, or Image of that rule of the fewer number, which is called of the Gréekes Ἀριστοκρατία, and of the Latines Optimatum Reſpublica,

Chap. XIV.

The firſt originall, or beginning of the rule of the multitude called πολιτία or Δημοκρατία.

NOw, as time bringeth an end of all things, theſe brethren being all dead, and their off-ſpring increaſing daily to a great multitude, and the reuerence due to the old Fathers in ſuch and ſo great number of equals failing, by the reaſon of the death or dying of the Elders: each owing their merits of education a part to their Fathers and Grandfathers, and ſo many ariſing, and ſuch equalities among them, it was not poſſible that they ſhould bee content to bee gouerned by a few. For two things being ſuch, as for the which men in ſocietie and

league

league moſt ſtrive, that is, honour and profit, no men of free courage can be contented to be neglected therein, ſo that they were faine of neceſſitie to come to that, that the more part ſhould beare the price away in election of Magiſtrates and Rulers. So that either by courſe or by lot, each man in turne might be received to beare rule, and have his part of the honour: and (if any were) of the profite which came by adminiſtration of the Common-wealth. For whoſoever came of that olde great Grandfathers race, he accounted himſelfe as good of birth as any other. For ſervice to the Common-wealth, all, or ſuch a number had done it, as they could not be accounted few. And if a few would take upon them to uſurpe over the reſt, the reſt conſpiring together would ſone be maſters of them, and ruinate them wholy. Wherupon neceſſarily it came to paſſe, that the Common-wealth muſt turne & alter as before from one to a few, ſo now from a few to many and the moſt part, each of theſe yet willing to ſave the politicke bodie, to conſerve the authority of their nation, to defend themſelves againſt all other, their ſtrife being onely for Empire and rule, and who ſhould do beſt for the Common-wealth, whereof they ſhould have experience, made by bearing Office and being Magiſtrates. This I take for the firſt and naturall beginning of the rule of the multitude, which the Greeks called Δημοκρατίαν: the Latines, ſome *Reſpublica*, by the generall name, ſome *Populi poteſtas*, ſome *Cenſus poteſtas*, I cannot tell how latinely.

Chap. XV.

That the Common-wealth or Policy, muſt be according to the nature of the people.

By this proceſſe and diſcourſe, it doth appeare that the mutations & changes of fashions, of gouernment in

Common-wealths bee naturall, and doe not alwayes come of ambition or malice: And that according to the nature of the people, so the Common-wealth is to it fit and proper. And as all these three kindes of Common-wealths are naturall, so when to each partie or especs e kinde of the people, that is applyed which best agréeth, like a garment to the body, or shooe to the foot, then the bodie Politick, is in quiet, and findeth ease, pleasure and profit. But if a contrarie forme bee given to a contrarie manner of people, as when the shoe is to little or to great for the fot, it doth hurt and incumber the conuenient vse thereof, so the fréepeople of Nature tyrannized or ruled by one against their wils, were he neuer so good, eyther faile of courage and warlerule, or neuer rest buttill they eyther destroy the King and them that would subdue them, or be destroyed themselues. And againe, another sort there is, which without being ruled by one Prince, but set at libertie, cannot tell what they should doe, but either through insolencie, pride, and idlenesse, will fall to robbery, and all mischiefe, and to scatter and dissolue themselues, or with foolish ambition and priuate strife consume one another, and bring themselues to nothing. Of both these two wee haue Histories enough to beare witnesse, as the Grékes, Romanes, Samnites, Danes, Vandals, and others. Yet must you not thinke that all Common-wealths, administrations and rulings, began on this sort, by promising or propagation, as is before written: But many times after a great battaile and long warre, the Captaine who led a multitude of people gathered peraduenture of diuers Nations and Languages, liking the place which hee hath by force conquered, tarryeth there, and beginneth a Common-wealth after this manner, and for the most part a Kingdome. As the Gothes and Lumbards in Italie, the Frenchman in Gaule, the Saracins in Spaine, and part of France, the Saxons

Græci.
Romani.
Samnites.
Vandali.
Dani.
Norwegi.
Sueci.

Barons in great Britain, which is now called England: „Of which, when that one and chiefe Prince is dead, the „Nobler sort consult among themselues, and eyther chuse „another head and King, or diuide it into moze heads and „Rulers, so did the Lumbards in Italy, and the Barons in England: or take at the first a common rule and popular estate, as the Zwitzers did in their Cantons, and doe yet at this day, or elſe admit the rule of a certaine few, excluding the multitude and Communaltie, as the Paduans, Veronenſes, and Venetians haue accuſtomed.

Chap. XVI.

The diuiſion of the parts and perſons of the Common-wealth.

TO make all things yet cléere before, as we ſhall goe, there ariſeth another diuiſion of the parts of the Common-wealth. For it is not enough to ſay that it conſiſteth of a multitude, of Houſes & Familes, which make ſtréets and villages, and the multitude of the ſtréets and villages make townes, and the multitude of townes the Realme, and that frémen be conſidered onely in this behalfe, as Subiects and Citizens of the Common-wealth, and not bondmen, who can beare no rule nor iuriſdiction ouer frémen, as they who bée taken but as inſtruments, and the goods and poſſeſſions of others. In which conſide„ration alſo we do reiect women, as thoſe whom Nature „hath made to kéepe home and to nourith their Family „and Children, and not to meddle with matters abroad, „nor to beare Office in a Citie or Common-wealth, no „more than Children and Infants: except it be (in ſuch ca„ſes as the Authority is annexed to the Blood and Pro„genie, as the Crowne, a Dutchie, or an Earle dome: for „there the blood is reſpected, not the Agenor the Sexe.

Whereby an absolute Quéene, an absolute Dutches or Countesse, those I call absolute, which haue the name, not by being marryed to a King, Duke or Earle, but by being the true, right and next Successors in the dignity, and vpon whom by right of the bloud that title is descended: These I say, haue the same authoritie, although they be women or children in that Kingdome, Dutchie, or Earledome, as they should haue had if they had béene men full of age. For the right and honour of the bloud, & the quietnesse & suerty of the Realme, is more to be considered, then either the tender age as yet impotent to rule or the Sexe not accustomed (otherwise) to intermeddle
„ with publick affaires, being by common intendment vn-
„ derstood, that such Personages neuer doe lacke the coun-
„ sell of such graue and discréete men as bee able to supply all other defects. This (as I said) is not enough: But the Diuision of these which be participant of the Common-
„ wealth, is one way of them that beare office, the other of
„ them that beare none: The first are called Magistrates, the second priuate men. Besides, the like was among the Romanes of *Patricij* and *Plebei*, the one striuing with the other a long time, the *Patricij* many yéeres excluding the *Plebei* from bearing rule, vntill at last all Magistrates were made common betwéene them: yet was there another diuision of the Romanes, into *Senatores, Equites*, and *Plebs*: the Gréekes had also εὐγενεῖς καὶ Δημοτικοὺς. The French haue at this day, les nobles & la populaire, or gentill homes & villaines: wee in England deuide our men commonly into foure sorts, Gentlemen, Citizens, Yeomen, Artificers and Labourers, of Gentlemen the first and chiefe are the King, the Prince, Dukes, Marquises, Earles, Vicounts, Barrons, and these are called κατ' ἐξοχὴν the Nobilitie, and all these are called Lords and Noblemen: next to these be Knights, Esquires, and simple Gentlemen.

CHAP.

Chap. XVII.

Of the first part of Gentlemen of England, called *Nobilitas Maior.*

Nobilitas maior. Eldest Sonnes of Dukes are not Earles by birth, but Lords, and take their place aboue Earles, and so are Earles eldest Sonnes in respect of Barons. Esquires of honour, or Lords.

Dukes, Marquises, Earles, Vicounts, and Barons, eyther be created by the Prince, or come to that honour by being the eldest Sons, as highest & next in succession to their Parents. For the eldest of Dukes Sons during his Fathers life is called an Earle: an Earles Son is called by the name of a Vicount or Baron, or els according as the Creation is. The Creation I call the first donation & condition of the honour (giuen by the Prince for good seruice done by him, and aduancement that the Prince will bestow vpon him) which with the title of that honor, is commonly (but not alwayes) giuen to him and to his Heires, Males onely: the rest of the Sons of the Nobility, by the rigour of the Law be but Esquires, yet in common speech, all Dukes, and Marquises Sons, and the eldest Son of an Earle be called Lords. The which name commonly doth agrée to none of lower degrée then Barons, excepting such onely, as bee therevnto by some speciall Office called. The Barony or degrée of Lords, doth answere to the dignitie of the Senators of Rome, and the title of our Nobility to their *Patricij*: when *Patricij* did betoken *Senatores, aut Senatorum filios.* Census Senatorum was in Rome, at diuers times diuers, & in England no man is created a Baron, except he may dispend of yerely reuenue one thousand pounds, or one thousand markes at the least. Vicounts, Earles, Marquesses, and Dukes more, according to the proportion of the degrée and honour, but though by chance hée or his Sonne haue lesse, he keepeth his degrée: but if they decay by excesse, and be not able to maintayne the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted

mitted the vpper Houſe in the Parliament, although they keepe the name of Lord ſtill.

Chap. XVIII.

Of the ſecond ſort of Gentlemen, which may be called *Nobilitas minor*, and firſt of Knights.

NO man is a Knight by ſucceſſion, no not the King or Prince. And the name of Prince in England κατ' ἐξοχὴν, betokeneth the eldeſt ſonne or Prince of Wales: although the King himſelfe, his eldeſt Son, & all Dukes be called by generall name Princes. But as in France the Kings eldeſt Son hath the title of Dolphin, and hee or the next Heire apparant to the Crowne is Monſire, ſo in England the Kings eldeſt Son is called κατ' ἐξοχὴν the Prince. Knights therefore be not borne but made, either before the battell to incourage them the more to aduenture their liues, or after the conflict, as aduancement for their hardineſſe and manhood already ſhewed: or out of the Warr for ſome great ſeruice done: or ſome good hope through the vertues which do appeare in them. And they are made either by the King himſelfe, or by his Commiſſion and Royall Authority, giuen for the ſame purpoſe, or by his Lieutenant in the Warrs, who hath his Royal and abſolute power committed to him for that time. And that order ſéemeth to anſwere in part to that which the Romanes called *Equites Romani*, differing in ſome points, and agréeing in other, as their Common-wealth and ours do differ and agrée: for neuer in all points one Common-wealth doth agrée with another, no nor long time any one Common-wealth with it ſelfe. For all changeth continually to more or leſſe, and ſtill to diuers and diuers orders, as the diuerſitie of times do preſent occaſion, and the mutability of mens wits doth inuent and aſſay new wayes, to reforme and amend that wherein they doe

find

find fault, Equites Romani, were chosen ex censu, that is, according to their substance and riches. So bee Knights in England most commonly, according to the yerely reuenue of their Lands, breing able to maintayne that estate: yet all they that had Equestrem censum, non legebantur Equites. No more are all made Knights in England that may dispend a Knights Land or Fee, but they onely whom the King will so honour. The number of Equites was vncertaine, and so it is of Knights, at the pleasure of the Prince. Equites Romani had Equum publicum. The Knights of England haue not so, but finde their owne Horse themselues in peace-time, and most vsually in Warres.

Census Equester was among the Romanes at diuers times of diuers value: but in England whosoeuer may dispend of his free Landes fourtie poundes starling of yerely reuenue, by an olde Law of England, either at the coronation of the King, or Mariage of his Daughter, or at the dubbing of the Prince Knight, or some such great occasion, may bee by the King compelled to take that order and honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some, who for causes are not thought worthy of that honour and yet haue ability, neither bee made Knights, though they would, and yet pay the fine of xl. li. sterling at that time when this order began, which maketh now Cxx. li. of currant money of England: as I haue more at large declared in my Book of the diuersity of Standards, or the valour of Monies.

When the Romans did write, Senatus populusque Romanus, they seemed to make but two Orders, that is, of the Senate, and of the people of Rome, and so in the name of people they contayned Equites & Plebem: so when wee in England doe say the Lordes and the Commons: the Knights, Esquires, & other Gentlemen, with

Citizens, Burgeſſes and Yeomen, be accounted to make the Commons. In ordayning of Lawes, the Senate of Lords of England is in one houſe, where the Archbiſhops and Biſhops alſo bee, and the King or Quéene for the time being as chiefe, the Knights and all the reſt of the Gentlemen, Citizens and Burgeſſes, which bee admitted to conſult vpon the greateſt affaires of the Realme, be in another houſe by themſelues, & that is called the houſe of the Commons, as we ſhall more clérly deſcribe when wee ſpeake of the Parliament. Whereupon this word Knight is deriued, and whether it doe betoken no more but that which Miles doth in Latin, which is a Souldier, might be moued as a queſtion. The word Souldier now ſéemeth rather to come of ſold and payment, and more to betoken a waged or hired man to fight, than otherwiſe, yet Cæſar in his Commentaries called Soldures, in the tongue gallois, men who deuoted and ſwore themſelues in a certaine band or oath one to another, and to the Captaine, which order if the Almaines did follow, it may be, that they who were not hired, but beeing of the Nation, vpon their owne charges, and for their aduancement, and by ſuch common oath or band that did follow the Warres, (were poſſibly) τῶν ἱππέων called Knights or Milites, and now among the Almaines ſome are called Lance-knights, or Souldiers of their band not hired, although at this day they be for the moſt part hirelings. Or peradauenture it may be that they which were next about the Prince, as his Guard and Seruants, picked or choſen men out of the reſt, being called in the Almaine Language Knighten, which is as much to ſay as Seruants: theſe men being found of good Seruice, the word afterward was taken for an Honour, and for him who maketh profeſſion of Armes. Our Language is ſo changed, that I dare make no iudgement thereof. Now wee call him Knight in Engliſh, that the French calleth Cheualier, and

the

the Latine Equitem or Equeſtris ordinis.

And when any man is made a Knight, hee kneeling downe, is ſtroken of the Prince, with his Sword naked, vpon the back or ſhoulder, the Prince ſaying, ſus or ſois Cheualier au nom de Dieu, and (in times paſt) they added S. George, and at his ariſing the Prince ſaith auaunt-cer. This is the manner of dubbing of Knights at this preſent: and that terme dubbing, was the olde terme in this point, and not Creation. At the Coronation of a King or Queene, there be Knights of the Bath made, with long and more curious Ceremonies. Knights Bannerets are made in the Field, with the Ceremony of cutting of the point of his Standart, e making it as it were a Banner: he being before a Batcheler Knight, is now of a higher degree, allowed to diſplay his Armes in a Banner as Barons doe. But this order is almoſt growne out of vſe in England. But howſoeuer one be dubbed or made a Knight, his Wife is by e by called a Lady, as well as a Barons Wife: he himſelfe is not called Lord, but hath to his name in common appellation added this ſillable Sir, as if he before were named Thomas, William, Iohn, or Richard, afterward hee is alwayes called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the terme which men giue to Knights in England. This may ſuffice at this time, to declare the order of Knighthood, yet there is another order of Knights in England, which bee called the Knights of the Garter. King Edward the third after he had obtained many notable victories King Iohn of France, King Iames of Scotland, being both Priſoners in the Tower of London at one time, and King Henry of Caſtile the Baſtard expulſed out of his Realme, and Don Pedro reſtored vnto it by the Prince of Wales, and Duke of Aquitaine called the black Prince, inuented a ſocietie of honour, and made a choice out of his owne Realme and Dominions, and all Chriſtendome: and the

best and most excellent renowned persons in Vertues Honour, hee did adorne with that Title to be Knights of his Order, gaue the a Garter decked with Gold, Pearle, and pretious stones, with the buckle of Gold, to weare daily on the left leg onely, a Kirtle, Gowne, Cloke, Chaperon Coller, and other August and magnificall apparel both of stuffe and fashion exquisite and heroical, to weare at high Feasts, as to so high and Princely an Order was meete: of which Order he and his Successors Kings and Quenes of England to be the Souereigne, and the rest by certaine Statutes and Lawes among themselues, be taken as Brethren and Fellowes in that Order, to the number of xxvi. But because this is rather an ornament of the Realme, then any Policy or Gouernment thereof, I leaue to speake any further of it.

Chap. XIX.

Of Esquires.

Escuier or Equire (which we call commonly Squire) is a French word, and betokeneth Scutigerum or Armigerum, and be all those which beare Armes (as we call them) or Armories (as they terme them in French) which to beare is a testimonie of the Nobility or Race from whence they doe come. These be taken for no distinct order of the Common-wealth, but doe goe with the reste of the Gentlemen: saue that (as I take it) they bee those who beare Armes, testimonies (as I haue said) of their race, and therefore haue neither creation nor dubbing: or else they were at the first Colterels, or the Bearers of the Armes of Lords or Knights, and by that had their name for a dignity and honour, giuen to distinguish them from a common Souldier, called in Latine, Gregarius Miles.

Chap. XX.
Of Gentlemen.

Gentlemen be thoſe whom their bloud and race doth make noble and knowne, Εὐγενῆς in Greeke, the Latins cal them al Nobiles, as the french Nobles. Εὐγένεια or Nobilitas in Latine is defined, honor or tittle giuen for that the anceſtors haue been notable in riches or vertues or (in fewer words) old riches or prowes remaining in one ſtocke. Which if the ſucceſſors doe kéepe and follow, they be vere nobiles, & Εὐγενεῖς if they do not, yet the fame and wealth of their anceſtors, ſerue to couer them ſo long as it can, as a thing once gilted though it be copper within, till the gilt be worne away. This hath his reaſon, for the Etymologie of the name ſerued the efficacie of the word. Gens in Latine betokeneth the race and ſirname, ſo the Romanes had Cornelios, Sergios, Appios, Fabios, Æmilios, Piſones, Iulios, Brutos, Valerios of which who were Agnati, and therfore kept the name, were alſo Gentiles, & remaining the memorie of the glory of their progenitors fame, were Gentlemen of that or that race. This matter made a great ſtrife among the Romanes, when thoſe which were noui homines, were more allowed for their vertues new and newly ſhewen, than the old ſmell of auncient race, newly defaced by the euill life of their nephewes, and diſcendents could make the other to bee. Thus the Cicerones, Catones, and Marii had much adoe with thoſe auncients, and therefore ſaid Iuuenalis:

Malo pater tibi ſit Therſites, dummodo tu ſis
Æacidi ſimilis Vulcaniaque arma capeſſas:
Quàm to Therſiti ſimilem producat Achilles,

But as other Common-wealths were faine to doe, ſo muſt all Princes neceſſarily follow: that is, where vertue

tue to honour it. And although vertue of ancient race be easier to be obtayned, aswell by the example of the Progenitors, which incourageth, as also through hability of education and bringing vp, which enableth, and lastly, the enraced loue of Tenants and Neighbours to such Noblemen and Gentlemen, of whom they hold, and by whom they dos dwell, which pricketh forward to ensue in their fathers steps: So if all this do faile (as it were great pity it should) yet such is the nature of all humane things, and so the World is subiect to mutability that it doth many times faile: but when it doth, the Prince and Common-wealth haue the same power that their Predecessors had, and as the Husbandman hath to plant a new tree where the old faileth, so hath the Prince to honour vertue where he doth find it, to make Gentlemen, Esquires, Knights, Barons, Earles, Marquises and Dukes, where hee seeth vertue able to beare that honor or merits, and deserues it, and so it hath alwayes bin vsed among vs. But ordinarily the King doth only make Knights, and create Barons, or higher degrees: for as for Gentlemē, they be made good cheap in England. For whosoeuer studieth the lawes of the Realme, who studieth in the Vniuersities, who professeth liberall Sciences: and to bee short, who can liue idlely, and without manuall labour, and will beare the Port, charge and countenance of a Gentleman, hee shall be called Master, for that is the Title which men giue to Esquires, and other Gentlemen, and shall be taken for a Gentleman. For true it is with vs as he said, Tanti eris alijs, quanti tibi fueris: And (if need be) a King of Heralds shall also giue him for Money Armes newly made & inuented, the title whereof shall pretend to haue bin found by the said Herald, in perusing and viewing of olde Registers, where his Ancestors in times past had bene recorded to beare the same. Or if he will doe it more truly, and of better faith, hee will write that for the merits of

that

that man, & certaine qualities, which he doth ſée in him, and for ſundry noble Acts which he hath performed: he by the authority which he hath, as King of Heraulds and Armes, giueth to him and his heires, theſe & theſe Armes: which being done, I thinke he may be called a Squire, for he beareth euer after theſe Armes, ſuch then are called ſometime in a ſcorne, Gentlemen of the firſt head.

Chap. XXI.

Whether the manner of England in making Gentlemen ſo eaſily, is to be allowed.

A Man may make doubt and queſtion, whether this manner of making Gentlemen is to be allowed or no, and for my part I am of that opinion, that it is not amiſſe. For firſt the Prince loſeth nothing by it, as hee ſhould doe if it were in France: for the Yeoman or Huſbandman is no more ſubiect to taile or tare in England than the Gentleman: no, in euery payment to the King the Gentleman is more charged, which hee beareth the gladlier, and dareth not gaine ſay, for to ſaue and kéepe his honour and reputation. In any ſhewe or Muſter, or other particular charge of the towne where he is, he muſt open his Purſe wider, and augment his portion aboue others, or elſe he doth diminiſh his reputatiõ. As for their outward ſhew a Gentleman (if he will bee ſo accounted) muſt goe like a Gentleman, a Yeoman like a Yeoman, and a Raſcall like a Raſcall: and if hee bee called to the Warres, hee muſt and will (whatſoeuer it coſt him) array himſelfe, and arme him according to the vocation which hee pretendeth: hee muſt ſhew alſo a more manly courage, and tokens of better education, higher ſtomack, and bountifuller liberality than others, and keepe about him idle Seruants, who ſhall doe nothing but wait

vpon him. So that no man hath hurt by it but hee himselfe, who hereby perchance wil beare a bigger saile than he is able to maintaine. For as touching the policie and gouernement of the Common-wealth, it is not those that haue to doe with it, which will magnifie themselues, and goe in higher buskins than their estate will beare, but they which are to bee appointed, are persons tried and well knowne, as shall be declared hereafter.

Chap. XXII
Of Citizens and Burgesses.

Next Gentlemen, be appointed Citizens and Burgesses, such as not only be free, and receaued as officers within the Cities, but also be of some substance to beare the charges. But these Citizens and Burgesses, be to serue the Common-wealth, in their Cities and Burrowes, or in corporate townes where they dwell. Generally in the shieres they be of none account, saue only in the common assembly of the realme to make lawes which is called the Parliament. The ancient Cities appoint foure, and each borrow two, to haue voyces in it, and to giue their consent or dissent, in the name of the Citie or burrow for which they be appointed.

Chap. XXIII.
Of Yeomen.

Those whome we call yeomen, next vnto the Nobylitie, Knights and Squires, haue the greatest charge and doings in the Common-wealth, or rather are more traueled to serue in it then all the rest: as shall appeare hereafter. I call him a yeoman whome our lawes doe call Legalem hominem, a word familiar in writs and Enquests, which is a free man borne English, and may dispend

ſpend of his own free Land in yeerely reuenue to the ſum of 11.s. ſterling. This maketh (if the iuſt value were taken now to the proportion of monies) vi.li. of our currant money at this preſent. This ſort of people confeſſe themſelues to be no Gentlemen, but giue the honour to all which be or take vpon them to bee Gentlemen, and yet they haue a certayne preheminence and more eſtimation then labourers and Artificers, and commonly liue wealthily, kepe good houſes, and doe their buſineſſe and trauaile to acquire riches: theſe bee (for the moſt part) Farmours vnto Gentlemen, which with grazing, frequenting of Markets, & keeping Seruants not idly as the Gentleman doth, but ſuch as get both their own liuing and part of their Maſters, and by theſe meanes doe come to ſuch wealth, that they are able and daily do buy the Lands of vnthrifty Gentlemen, and after ſetting their Sons to the Schoole at the Vniuerſities, to the Lawes of the Realme, or otherwiſe learning them ſufficient Lands whereon they may liue without labour, doe make their ſaid Sonnes by thoſe meanes Gentlemen: Theſe be not called Maſters, for that (as I ſaid) pertayneth to Gentlemen only. But to their ſirnames men adde Goodman: as if the ſirname be Luter, Finch, White, Browne, they are called goodman Luter, goodman Finch, goodman White, goodman Browne, amongſt their Neighbors, I meane not in matters of importance, or in Law. But in matters of Law & for diſtinction, if one were a Knight, they would write him (for examples ſake) Sir Iohn Finch knight, ſo if he be an Eſquire Iohn Finch Eſquire or Gentleman, if hee bee no Gentleman, Iohn Finch Yeoman. For amongſt the Gentlemen they which clayme no higher degree, and yet bee to be exempted out of the number of the lowell ſort thereof, bee written Eſquires. So amongſt the Husbandmen, Labourers, the lowell and raſcall ſort of the people, ſuch as bee exempted out of the number of the raſcability of the po-

pular, be called & written Yeomen, as in the degrée next vnto Gentlemen. These are they which old Cato calleth Ararores, & optimos ciues in Republica, & such as of whom the Writers of Common-wealths prayse to haue many in it. Aristotle namely reciteth μόθακας μεσοπάλμα: these tend their owne businesse come not to meddle in publike matters and Judgements, but when they are called, and glad when they are deliuered thereof, are obedient to the Gentlemen and Rulers, and in War can abide trauaile and labour; as men vsed to fight for their Lords of whom they hold their lands for their wiues & children, for their Country and Nation, for prayse and honour against they come home, and to haue the loue of their Lord and his Children, to be continued towards them and their Children, which haue aduentured their liues for & with him and his. These are they which in the old World, gate that honor to England, not that either for wit, conduction, or for power they are or were to be compared to the Gentlemen, but because they be so many in number, so obedient at the Lords call, so strong of body, so hard to endure paine, so couragious to aduenture with their Lords, or Captaine, going with, or before them, for else they be not hasty nor neuer were, as making no profession of knowledge of Warre. These were the good Archers in times past, and the stable troop of footmen that affraid all France, that would rather die all, then once abandon the Knight or Gentleman their Captain, who at those daies commonly was their Lord, & whose Tenants they were, ready (besides perpetuall shame) to be in danger of vndoing of themselues, and all theirs, if they should shew any signe of cowardise, or abandon the Lord, Knight or Gentleman of whom they held their Liuing. And this they haue amongst them from their forefathers, told one to another. The Gentlemen of France, and the Yeomen of England, are renoumed, because in battell of Horse-

men,

men, France was many times too good for vs, as wee againe alway for them on foote. And Gentlemen for the most part be men at Armes and Horsemen, and Yeomen commonly on foot: howsoeuer it was, yet the Gentlemen had alwayes the conduction of the Yeomen, and as their Captaines were eyther a foot or vpon a little Nag with them, and the Kings of England in foughten Battailes remayning alwayes among the Footmen, as the French Kings among their Horsmen. Each Prince thereby, as a man may gesse, did shew where hee thought his strength did consist. What a Yeoman is I haue declared, but from whence the word is deriued it is hard to say: it cannot be thought that Yeomen should be said of a yong man, for commonly we doe not call any a Yeoman till he be married, and haue children, & as it were, haue some authority among his Neighbors. Yonker in low Dutch betokeneth a meane Gentleman, or a gay fellow. Possible our Yeomen not being so bolt as to name themselues Gentlemen when they came home, were content when they had hard by frequentation with low Dutch-men, of some small Gentleman (but yet that would be counted so) to be called amongst them Yonker man, they calling so in Wars by mockage or in sport the one another, when they came home, Yonker man, and so Yeoman: which word now signifieth among vs, a man well at ease, and hauing honestly to liue, and yet not a Gentleman: whatsoeuer that word Yonker man, yong man, or Yeoman doth more or lesse signifie to the Dutchmen.

German in the Saxon, is a marryed man, and hereof commeth our Yeoman, for after Mariage, men are accounted setled members in the Commonwealth, but not before. A Yonker commeth of yong Heire, which is a Son and Heire to a Gentleman, or a yong Gentleman.

Chap. XXIII.

Of the fourth sort of men which doe not rule.

The fourth sort or classe amongst vs, is of those which the old Romans called capite sensu proletarij

operarij, day labourers, poore Husbandmen, yea Marchants or Retaylers which haue no frée Land, Copyholders, & all Artificers, as Taylers, Shoomakers, Carpenters, Brick-makers, Brick-layers, Masons, &c. These haue no voyce nor authoritie in our Common-wealth, and no account is made of them, but only to bee ruled, and not to rule other, and yet they be not altogether neglected. For in Cities & corporate townes for default of Yeomen, Enquests and Juries are impaneled of such manner of people. And in Villages they bée commonly made Church-wardens, Ale-cunners, and many times Constables, which Office toucheth more the Common-wealth, and at the first was not imployed vpon such low and base persons. Wherfore generally to speake of the Common-wealth, or Policy of England, it is gouerned, administred, and mannaged by three sorts of persons, the Prince, Monarch, and head Gouernour, which is called the King, or if the Crowne fall to a woman, the Quéene absolute, as I haue heretofore said: In whose name and by whose authoritie all things are administred. The Gentlemen, which be deuided into two parts, the Barony or estate of Lords containing Barons, and all that be aboue the degrée of a Baron, (as I haue declared before:) and those which be no Lords, as Knights, Esquires, and simply Gentlemen.

The third and last sort of persons, is named the Yeomanry: Each of these hath his part and administration in iudgements, corrections of defaults, in election of offices, in appointing and collection of Tributes and Subsidies or in making Lawes, as shall appeare heereafter.

THE

THE SECOND BOOKE.

CHAP. I.

The diuision and definition of the Lawes of this Realme in generall.

THe Lawes of England consist in two points, { Iudgement and Practice.

In Iudgment are consi-dered the { Persons. Place. Matter, and Manner.

The Persons in Iudgement are the { Iudges in the Courts. Sergeants and Counsellors.

In Practice are considered the { Persons, and their Office.

The Persons are { Prothonotaries. Sollicitors, and Atturnies.

Their Office is to prepare the matter, and to make it readie for the Iudges to determine.

The Prothonotaries are the Clarkes in the Court, which doe record the matters hanging in iudgement, and

doe frame the pleading, enter the rules and orders of the Court, the verdites and iudgements giuen in the same.

Solicitors are such as being learned in the Lawes, and informed of their Masters Cause, doe informe & instruct the Counsellors in the same.

Atturnies are such as by experience haue learned and doe know the orders and manner of proceeding in euerie Court where they serue, and do purchase out Writs and Processe belonging to their Clients cause. They see to his Suites, that he be not hindred by negligence. They pay the Fées belonging to the Courts, and prepare the cause for iudgement.

The places for Iudgement are the Courts where sentence is giuen, and the Lawes made: as, the Parliament, Chancery, Kings-bench, the Common-pleas, the Exchequer, the Court of Wards, the Star-chamber, the Court of Requests, and the Dutchie Court of Lancaster.

The matter of the Law is { Iustice and Equitie.

The manner of their seuerall proceedings followeth.

Chap. II.

Of the Parliament, and the authoritie thereof.

THe most high and absolute power of the Realme of England cõsisteth in the Parliament. For as in War where the King himselfe in person, the Nobilitie, the rest of the Gentility, & the Yeomanry are, is the force and power of England: So in peace and consultation where the Prince is to giue life, and the last and highest commandement: the Baronie or Nobilitie for the higher: the Knights, Esquires, Gentlemen & Cõmons for the lower part of the Common-wealth: the Bishops for the Clergie

be

be preſent to aduertiſe, conſult and ſhew what is good & neceſſary for the Common-wealth, and to conſult together; and vpon mature deliberation euery Bill or Law, being thrice read & diſputed vpõ in either houſe, the other two parts, firſt each a part, and after the Prince himſelfe in preſence of both the parties, both conſent vnto and alloweth. That is the Princes and whole Realmes deed: whereupon iuſtly no man can complaine, but muſt accommodate himſelfe to find it good and obey it.

That which is done by this conſent is called firme, ſtable and ſanctum, and is taken for Law. The Parliament abrogateth olde Lawes, maketh new, giueth order for things paſt & for things hereafter to be followed, changeth right and Poſſeſſions of priuate men, legitimateth Baſtards, eſtabliſheth formes of Religion, altereth Waights and Meaſures, giueth forme of Succeſſion to the Crowne, defineth of doubtfull Rights, whereof is no Law already made, appointeth Subſidies, tailes, tares, & impoſitions, giueth moſt free Pardons & Abſolutions, reſtoreth in bloud and name, as the higheſt Court condemneth or abſolueth them whom the Prince will put to that tryall. And to be ſhort, all that euer the people of Rome might do, either in Centuriatis comitijs, or tributis, the ſame may bee done by the Parliament of England, which repreſenteth, and hath the power of the whole Realme, both the head and the bodie. For euery Engliſhman is intended to be there preſent, either in perſon, or by procuration and Atturney, of what preheminence, ſtate, dignitie or qualitie ſoeuer he be, from the Prince, (he bee King or Quéene) to the loweſt perſon of England. And the conſent of the Parliament, is taken to bee euery mans conſent.

Alias tribunitijs.

The Iudges in Parliament are the King or Quenes Maieſtie, the Lords Temporall and Spirituall, the Commons repreſented by the Knights & Burgeſſes of euery

Shire

Shiere and Borough Towne. These all, or the greater part of them and that with the consent of the Prince for the time being, must agree to the making of Lawes.

The Offices in Parliament are the Speakers, two Clarkes, the one for the higher house, the other for the lower, and Committies.

The Speaker is hee that doth commend and preferre the Bils exhibited into the Parliament, and is the mouth of the Parliament. Hee is commonly appointed by the King or Queen, though accepted by the assent of the house.

The Clarkes are the Keepers of the Parliament Rols and Records, and of the Statutes made, and haue the custody of the priuate Statutes not printed.

The Committies are such as eyther the Lords in the higher house, or Burgesses in the lower house, doe choose to frame the Lawes vpon such Bils as are agreed vpon, and afterward to be ratified by the same Houses.

Chap. III.

The forme of holding the Parliament.

The Prince sendeth forth his Rescripts, or Writs to euery Duke, Marquesse, Baron, and euery other Lord Temporal or Spiritual who hath voice in the Parliament, to be at his great counsell of Parliament such a day (the space from the date of the Writ is commonly at the least forty dales) he sendeth also Writs to the Sherifs of euery shire, to admonish the whole shire to chose two Knights of the Parliament in the name of the shire, to heare and reason, and to giue their aduise and consent in the name of the shire, and to be present at that day: likewise to euery Citie and Towne, which of ancient time hath bin wont to find Burgesses of the Parliament, so to make election, that they might be present there at the

first

firſt day of the Parliament. The Knights of the ſhire be choſen by all the Gentlemen and Yeomen of the ſhire, preſent at the day aſſigned for the election: the voyce of any abſent can be counted for none. Yeomen I call here (as before) that may diſpend at the leaſt xl.s. of yearely rent of free land of his owne. Theſe meeting at one day, the two who haue the more of their voyces bee choſen Knights of the ſhire for that Parliament: likewiſe by the plurality of the voices of the Citizens and Burgeſſes, be the Burgeſſes elected. The firſt day of the Parliament, the Prince & all the Lords in their Robes of Parliament doe meete in the higher houſe, where after Prayers made, they that be preſent are written, and they that bee abſent vpon ſickneſſe, or ſome other reaſonable cauſe (which the Prince will allow) doe conſtitute vnder their hand and ſeale, ſome one of thoſe who be preſent, as their Procurer or Atturny, to giue voice for them, ſo that by preſence or Atturny and Proxy they be all there, all the Princes and Barons, and all Archbiſhops and Biſhops, and (when Abbots were) ſo many Abbots as had voice in Parliament. The place where the Aſſembly is richly tapeſſed and hanged, a Princely and Royall Throne as appertayneth to a King, ſet in the middeſt of the higher place thereof. Next vnder the Prince ſitteth the Chancellor, who is the voyce and Orator of the Prince. On the one ſide of that houſe or chamber, ſitteth the Archbiſhops and Biſhops, each in his ranke, on the other ſide the Dukes and Barons.

In the middeſt thereof vpon Woolſackes ſitteth the Iudges of the Realme, the Maſter of the Roules, and the Secretaries of Eſtate. But theſe that ſit on the woolſacks haue no voyce in the houſe, but onely ſit there to anſwere their knowledge in the Law, when they be aſked, if any doubt ariſe among the Lords: The Secretaries doe anſwere of ſuch letters or things paſſed in counſell, whereof

they haue the cuſtodie and knowledge: and this is called the vpper houſe, whoſe conſent and diſſent is giuen by each man ſeuerally, and by himſelfe, firſt for himſelfe, and then ſeuerally for ſo many as he hath Letters & Proxies, when it commeth to the queſtion, ſaying onely content or not content, without further reaſoning or replying. In this meane time the Knights of the ſhires, and Burgeſſes of the Parliament (for ſo they are called that haue voyce in Parliament, & are choſen as I haue ſaid before to the number betwixt three and foure hundred) are called by ſuch as it pleaſeth the Prince to appoint, into another great houſe or chamber by name, to which they anſwere: and declaring for what Shire or Towne they anſwere, then they are willed to chooſe an able and diſcréete man, to bée as it were the mouth of them all, and to ſpeake for, and in the name of them, and to preſent him ſo choſen by them to the Prince: which done they comming all with him to a Barre, which is at the nether end of the vpper houſe, there he firſt prayſeth the Prince, then maketh his excuſe of inability, and prayeth the Prince that he would command the Commons to chooſe another. The Chancellour in the Princes Name doth ſo much declare him able, as he did declare himſelfe vnable, and thanketh the Commons for chooſing ſo wiſe, diſcréete, and eloquent a man, and willeth them to goe and conſult of Lawes for the Common-wealth. Then the ſpeaker maketh certaine requeſts to the Prince in the name of the Commons, firſt that his Maieſty would be content that they may vſe and enioy all their Liberties and Priuiledges that the common houſe was wont to enioy.

Secondly, that they may frankly and freely ſay their minds, in diſputing of ſuch matters as may come in queſtion, and that without offence to his Maieſtie.

Thirdly, if any ſhould chance of that lower houſe to offend, or not to doe or ſay as ſhould bee come him, or if any

ny ſhould offend any of them being called to that his Highneſſe Court, that they themſelues might (according to the ancient cuſtome) haue the puniſhment of them. And fourthly, that if there come any doubt, whereupon they ſhall deſire to haue the aduiſe or conference with his Maieſtie, or with any of the Lords, they might doe it: all which hee promiſeth in the Commons names, that they ſhall not abuſe, but haue ſuch regard as moſt faithfull, true, and louing Subiects ought to haue to their Prince.

The Chancellor anſwereth in the Princes name, as appertayneth. And this is all that is done for one day, & ſometime for two. Beſides the Chancellor, there is one in the vpper houſe, whoſe is called Clarke of the Parliament, who readeth the bils. For all that commeth in conſultation either in the vpper houſe or in the nether houſe, is put in writing firſt in paper, which being once read, he that will riſeth vp and ſpeaketh with it or againſt it: and ſo one after another ſo long as they ſhal think good. That done, they goe to another, and ſo another Bill. After it hath béene once or twice read, and doth appeare that it is ſomewhat liked as reaſonable, with ſuch amendment in words, and peraduenture ſome ſentences, as by diſputation ſéemeth to be amended: in the vpper houſe the Chancellor aſketh if they will haue it ingroſſed, that is to ſay, put into parchment: which done, and read the third time, and that eft-ſones, if any be diſpoſed to obiect, diſputed againe among them, the Chancellor aſketh if they will goe to the queſtion: and if they agrée to goe to the Queſtion, then he ſayth, here is ſuch a Law or Act concerning ſuch a matter, which hath béene thrice read héere in this houſe, are ye content that it be enacted or no? If the not contents be moe, then the bill is dashed, that is to ſay, the Law is annihilated, and goeth no farther. If the contents be the moe, then the Clarke writeth vnderneath: Soit

baille aux commons. And ſo when they ſée time, they ſend ſuch Bils as they haue approued, by two or thrée of thoſe which doe ſit on the woolſaks to the Commons: who aſking licence and comming into the houſe, with due reuerence, ſaith to the ſpeaker: Maiſter ſpeaker, my Lords of the vpper houſe haue paſſed among them and think good, that there ſhould be enacted by Parliament ſuch an Act, and ſuch and Act, and ſo readeth the titles of that Act or Acts. They pray you to conſider of them, and ſhew them your aduiſe, which done they goe their way. They being gone, and the doore againe ſhut, the ſpeaker rehearſeth to the houſe what they ſaid. And if they bee not buſie diſputing at that time another Bill, hee aſketh them ſtraightway if they will haue that Bill, or (if there be moe) one of them.

In like manner in the lower houſe the ſpeaker ſitting in a ſeat or chaire for that purpoſe ſomewhat higher, that he may ſée and be ſéene of them all, hath before him, in a lower ſeate his Clarke, who readeth ſuch Bils as be firſt propounded in the lower houſe, or be ſent downe from the Lords. For in that point each houſe hath equall authority, to propound what they thinke meet, eyther for the abrogating of ſome Law made before, or for making of a new. All Bils be thrice in thrée diuers dayes read and diſputed vpon, before they come to the queſtion. In the diſputing is a maruellous good order vſed in the lower houſe. Hee that ſtandeth vp bare-headed is vnderſtanded that he will ſpeake to the Bill. If moe ſtand vp, who that is firſt iudged to ariſe, is firſt heard, though the one doe praiſe the Law, the other diſſwade it, yet there is no altercation. For euery man ſpeaketh as to the ſpeaker, not as one to another, for that is againſt the order of the houſe. It is alſo taken againſt the order, to name him whom yée doe confute, but by circumlocution, as he that ſpeaketh with the Bill, or he that ſpake againſt the Bill,

and

and gaue this and this reaſon. And ſo with perpetuall Oration not with altercation, he goeth through till he haue made an end. He that once hath ſpoken in a bill, though he be confuted ſtraight, that day may not reply, no though he would change his opinion. So that to one bill in one day one may not in that houſe ſpeak twice, for elſe one or two with altercation would ſpend all the time. The next day he may, but then alſo but once.

No reuiling or nipping words muſt be vſed. For then all the houſe will cry, it is againſt the order: and if any ſpeake vnreuerently or ſeditiouſly againſt the Prince or the priuy Councell, I haue ſéene them not onely interrupted, but hath béene moued after to the houſe, and they haue ſent them to the tower. So that in ſuch a multitude and in ſuch diuerſitie of minds, and opinions, there is the greateſt modeſty and temperance of ſpéech that can bee vſed. Nenertheleſſe, with much doubte and gentle termes they make their reaſons as violent and as vehement the one againſt the other as they may ordinarily, except it be for vrgent cauſes, and haſting of time. At the afternoone they kéepe no Parliament. The ſpeaker hath no voyce in the houſe, nor they will not ſuffer him to ſpeake in any bil to moue or diſſwade it. But when any bill is read, the ſpeakers office is, as briefly and as plainly as he may, to declare the effect thereof to the houſe. If the Commons doe aſſent to ſuch bils as be ſent to them firſt agréed vpon from the Lords thus ſubſcribed, Les communs ont aſſentus, ſo if the Lords doe agrée to ſuch bils as be firſt agréed vpon by the Commons, they ſend them down to the ſpeaker thus ſubſcribed, Les Seigneurs ont aſſentus. If they cannot agrée, the two houſes (for euery bill from whence ſo euer it doth come, is thrice read in each of the houſes) if it be vnderſtood that there is any ſticking, ſometimes the Lords to the Commons, ſometime the Commons to the Lords, doe require that a certaine of each houſe may

méte together, and ſo each part to be enformed of others meaning, and this is alwayes granted. After which méting for the moſt part, not alwayes, either part agrées to others bils.

In the vpper houſe they giue their aſſent and diſſent each man ſeuerally and by himſelfe, firſt, for himſelfe, and then for ſo many as he hath Proxie. When the Chancellor hath demanded of them, whether they will goe to the queſtion after the bill hath béene thrice read, they ſaying only content or not content, without further reaſoning or replying: and as the more number doth agrée, ſo it is agréed on, or daſhed.

In the nether houſe none of them that is elected, either Knight or Burges can giue his voyce to another, nor his conſent or diſſent by Proxie. The more part of them that be preſent only maketh the conſent or diſſent. After the bil hath béene twice read, and then engroſſed, and ſometimes read and diſputed on enough as is thought, the ſpeaker aſketh if they will goe to the queſtion: And if they agrée, he holdeth the bill vp in his hand and ſaith: As many as will haue this bill goe forward, which is concerning ſuch a matter, ſay yea, Then they which allow the bil cry yea, and as many as will not, ſay no: as the cry of yea or no is bigger, ſo the bill is allowed or daſhed. If it be a doubt which cry is bigger, they deuide the houſe, the ſpeaker ſaying, as many as doe allow the bill go downe with the bil, and as many as do not, ſit ſtil. So they deuide themſelues, and being ſo deuided, they are numbred who made the more part, and ſo the bill doth ſpéd. It chanceth ſometime that ſome part of the bil is allowed, ſome other part hath much controuerſie and doubt made of it: and it is thought if it were amended it would goe forward. Then they chuſe certain Committees of them who haue ſpoken with the bill and againſt it, to amend it, & bring it againe ſo amended, as they amongſt them ſhall thinke méet: and

this

this is before it is engrossed, yea and sometime after. But the agréement of these Committes is no preiudice to the house. For at the last question they will either accept it or dash it, as it shall séeme good, notwithstanding that whatsoeuer the Committes haue done.

Thus no bill is an Act of Parliament, Ordinance, or edict of Law, vntill both the houses seuerally haue agréed vnto it after the order aforesaid, no nor then neither. But the last day of that Parliament or Session, the Prince commeth in person in his Parliament Robes and sitteth in his state: all the vpper house sitteth about the Prince in their states and order in their Robes. The speaker with all the common house commeth to the Barre, and there after thanksgiuing first in the Lords name by the Chancelour, &c. And in the Commons name by the speaker to the Prince, for that hee hath so great care of the good gouernment of his people, and for calling them together to aduise of such things as should bee for the reformation, establishing, and ornament of the Common-wealth: the Chancelor in the Princes name giueth thanks to the Lords and Commons for their paines and trauailes taken, which he saith, the Prince will remember and recompence when time and occasion shall serue, and that he for his part is ready to declare his pleasure concerning their procédings, wherby the same may haue perfect life and accomplishment by his Princely authority, & so haue the whole consent of the Realme. Then one reades the titles of euery Act which hath passed at that Session, but onely in this fashion: An Act concerning such a thing, &c. It is marked there what the Prince doth allow, and to such hee saith: Le Roy, or la Royne le veult. And those bee taken now as perfect Lawes and Ordinances of the Realme of England and none other, and as shortly as may bee put in print, except it be some priuate cause or Law made for the benefit or preiudice of some priuate man,

man, which the Romans were wont to call priuilegia. These bee onely exemplified vnder the Seale of the Parlament, and for the most part not printed. To those which the Prince liketh not, he answereth, Le Roy, or la Rayne, saduisera, and those bee accounted vtterly dashed and of none effect.

This is the order and forme of the highest and most authenticall Court of England, by vertue whereof all those things be established whereof I spake before, and no other means accounted availeable to make any new forfaiture of life, member, or lands of any English man, where there was no Law ordayned for it before. Now let vs speake of the said parts when they be severall.

Chap. IIII.

Of the Monarch, King, or Queene of England.

The Prince whom I now cal (as I haue often before) the Monarch of England, King, or Quéen, hath absolutely in his power the authority of War and Peace, to defie what Prince it shall please him, and to bid him war, and againe to reconcile himselfe and enter into league or truce with him at his pleasure, or the aduise onely of his priuy Councell. His priuy Councell are chosen all at the Princes pleasure out of the Nobility or Baronry, and of the Knights, and Esquires such and so many as hee shall thinke good, who doe consult daily, or when néed is, of the waighty matters of the Realme to giue therin to their Prince their best aduise they can. The Prince doth participate to them all, or so many of them as hee shall thinke good, such legations and messages as come from forreine Princes, such letters or occurrents as be sent to himselfe or to his Secretaries, and kéepeth so many Ambassages and Letters sent vnto him secret as hee will, although these haue a particular oath of a Counsellour touching faith

faith and secrets administred vnto them when they bee first admitted into that cõpany. So that herein the Kingdome of England is farre more absolute then eyther the Dukedome of Venice is, or the Kingdome of the Lacedemonians was. In War time, and in the field the Prince hath also absolute power, so that his word is a Law, hee may put to death, or to other bodily punishment, whom he shall thinke so to deserue, without Processe of Law or forme of Judgement. This hath beene sometime vsed within the Realme before any open Warre, in suddaine Insurrections & Rebellions, but that not allowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, as much as of the present necessity, especially when by any meanes the punishment might haue bin done by order of Law. This absolue power is called Partiall Law, and euer was, & necessarily must be vsed in all Camps and Hosts of men, where the time nor place doe suffer the tarriance of pleading and Processe be it neuer so short, and the important necessity requireth spædie execution, that with more awe the Souldier might bee kept in more straight obedience, without which neuer Captaine can doe any thing vaileable in the Warres.

The Prince vseth also absolute power in crying and decrasing the Money of the Realme by his Proclamation onely. The Money is alwayes stamped with the Princes Image & Title. The forme, fashion, manner, weight, fineneſſe & baſeneſſe thereof, is at the discretion of the Prince. For whom should the people trust more in that matter than their Prince, seeing the Coyne is only to certifie the goodneſſe of the Pettall and the waight, which is affirmed by the Princes Image and mark? But if the Prince will deceiue them, & giue them Copper for Siluer or Gold, or inhance his Coine more than it is worth, he is deceiued by his subiects. For in the same sort they pay the Prince

his rents and custome. And in time they will make him pay ratibly or more for meat, drinke, and victuals for him and his, and for their labour, which experience doth teach vs now in our dayes to be done in all Regions. For there euer hath bene and euer will bee a certaine proportion betweene the scarcity and plenty of other things, with Gold and Siluer. For all other Measures and Weights, aswell of dry things as of wet, they haue accustomed to be established or altered by the Parliament, and not the Princes Proclamation onely.

The Prince vseth also to dispence with Lawes made, whereas equitie requireth a moderation to be had, and with paines for transgressing of Lawes, where the paine of the Law is applied only to the Prince. But where the forfaite (as in popular actions it chanceth many times) is part to the Prince, the other part to the Declarator, Defector or Informer, there the Prince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that manner is called with vs at the Princes suite) the Prince giueth absolution or pardon, yet with a clause, modo stet rectus in curia, that is to say, that no man obiect against the offendor. Whereby notwithstanding that he hath the Princes pardon if the person offended will take vpon him the accusation (which in our Language is called the Appeale) in cases where it lyeth, the Princes pardon doth not serue the offender.

The Prince giueth all the chiefe and highest Offices or Magistracies of the Realme, be it of iudgment or dignity, Temporall or Spirituall, and hath the Tenths and first Fruits of all Ecclesiasticall promotion, except in the Vniuersities, and certaine Colledges, which be exempt.

All Writs, Executions and Commandements, bee done in the Princes name. We doe say in England, the life & member of the Kings subiect are the Kings only, that is to say, no man hath hault nor moyenne Iustice but the

the King, nor can hold plea thereof. And therefore all those pleas which touch the life or the mutilation of man bee called pleas of the Crowne, nor can be done in the name of any inferiour person than hee or shee that holdeth the Crowne of England. And likewise no man can giue pardon thereof but the Prince onely: although in times past there were certaine County Palatines, as Chester, Durham, and Ely, which were hault Iusticers, and Writs went in their Name, and also some Lord Marches of Wales, which claymed like priuiledge: all these are now worne away. The Supreme Iustice is done in the Kings Name, and by his Authority onely.

The Prince hath the Wardship & first Mariage of all those that hold land of him in chiefe. And also the gouernment of all Foles naturall, or such as be made by aduenture of sicknesse, and so continue, if they be landed. This being once grounded by Act of Parliament (although some inconuenience hath bin thought to grow thereof, & since that time it hath béene thought very vnreasonable) yet once annexed to the Crowne, who ought to goe about to take the Club out of Hercules hand? And being gouerned iustly and rightly, Ilée not so much inconuenience in it, as some men would make of it: diuers other rights and prehemineuces the Prince hath, which be called prerogatiues, Royals, or the prerogatiue of the King, which be declared particularly in the Books of the Common Lawes of England.

To be short, the Prince is the Life, the Head, and the Authoritie of all things that bee done in the Realme of England. And to no Prince is done more honour and reuerence, then to the King and Quéne of England: no man speaketh to the Prince, nor serueth at the Table, but in adoration and knéeling, all persons of the Realme bée bare-headed before him: in so much that in the Chamber of Presence where the cloth of Estate is set, no man dare

walke, yea, though the Prince be not there, no man dare tarry there but bare-headed. This is vnderstood of the Subiects of the Realme, for all Strangers bee suffered there and in all places to vse the manner of their Countrey, such is the ciuility of our Nation.

Chap. V.

The chiefe points wherin one Common-wealth doth differ from another.

NOw that we haue spoken of the Parliament (which is the whole vniuersall, and generall consent and authority aswell of the Prince, as of the Nobility & Commons, that is to say, of the whole head and bodie of the Realme of England) and also of the Prince, (which is the head, life and gouernour of this Common-wealth) there remayneth to shew, how this Head doth distribute his Authority and Power to the rest of the members for the Gouernment of his Realme, and Common-wealth of the Politick body of England. And whereas all Common-wealths and Gouernments be most occupied, and be most diuers in the fashion of fiue things: In making of Lawes and Ordinances, for their own Gouernment: in making of Battell and Peace, or truce with forreine Nations, in prouiding of Money for the maintenance of themselues, & defence of themselues against their Enemies, in chusing and election of the chiefe Officers and Magistrates: and fiftly, in the administration of Iustice. The first and third wee haue shewed is done by the Prince in Parliament. The second and fourth, by the Prince himselfe: the fifth remayneth to be declared.

1
2
3
4
5

Chap.

Chap. VI.

Of three manners and formes of Tryals or Iudgements in England.

By our order and vſage of England, there be three wayes and manners whereby abſolute and definite iudgement is given, by Parliament, which is the higheſt and moſt abſolute, by Battle, and by the great Aſſiſe.

Chap. VII.

Tryall, or Iudgement by Parliament.

The manner of giuing Iudgement by Parliament betweene priuate and priuate men, or betweene the Prince and any priuate man, be it in matters criminall or ciuill, for Land or for Heritage, doth not differ from the order which I haue preſcribed, but it proceedeth by Bill three read in each houſe, and aſſented to as I haue ſaid before, and at the laſt day confirmed and allowed by the Prince. Howbeit ſuch Bils be ſeldome receiued, becauſe that great Counſell being enough occupyed with the publike Affaires of the Realme, will not gladly intermeddle it ſelfe with priuate quarrels and queſtions.

Chap. VIII.

The tryall of Iudgement by Battle.

This is at this time not much vſed, partly becauſe of long time the Pope and the Clergie, to whom in time paſt we were much ſubiect, alwayes cryed againſt it as a thing damnable and vnlawfull: and partly becauſe in all Common-wealths, as to the tongue, ſo to the manners, faſhions, habits, yea and kinds of Tryals & Iudgements, and to all other things that is therein vſed, time

and ſpace of yeares bringeth a change. But I could not yet learne that it was euer abrogated. So that it remayneth in force, whenſoeuer it be demanded. The manner of it is deſcribed in Briton.

Chap. IX.

The tryall by Aſſiiſe or twelue men, and firſt of the three parts which be neceſſary in Iudgement.

The two firſt Iudgements be abſolute, ſupreame and without appeale, and ſo is alſo the iudgement by the great Aſſiſe. And the cauſe or manner of Iudgements in England is in many things different from the faſhion vſed eyther in France or in Italy, or in any other place. If the Emperors Lawes & Conſtitutions (called the Ciuill Lawes) be put in vſe, it will be neceſſary here to make a little digreſſion, to the intent, that that which ſhall be ſaid hereafter, may be better vnderſtood. Al purſuits & actions (we call them in our Engliſh tongue pleas) and in barbarous (but now vſuall Latine) placita, taking that name, abuſiue of the definitiue ſentence, which may well be called placitum, or δόγμα. The French vſed the ſame, called in their language, the ſentence of their Iudges areſte, or areſt, in which words notwithſtanding after their cuſtome they do not ſound the t. But we call placitum, the action, not the ſentence, and placitare barbarouſly, for to plead in Engliſh, agere, or litigare. Now in all Iudgements being two parties, the firſt we call the Impleader, Suiter, Demander, or Demandant, and Plaintife. In criminall cauſes, if he profeſſe to bee an accuſer, wee call him appellant, or appelour, and ſo, accuſation we call appeale. The other wee call the Defendant, and in criminall cauſes, Priſoner, for he cannot anſwere, in cauſes criminall, before he dos render himſelfe, or be rendered Priſoner.

Iudex

Iudex, is of vs called Iudge, but our fashion is so diuers, that they which giue the deadly stroke, and either condemne or acquite the man for guilty or not guilty, are not called Iudges, but the twelue men. And the same order aswell in ciuill matters and Pecuniarie, as in matters criminall.

Chap. X.

Of Pleas or Actions.

Pleas, or actions criminall, be in English called pleas of the Crowne, which be all those which tend to take away a mans life or any member of him, for his euill deseruing against the Prince and Common-wealth.

And this name is giuen not without a cause. For taking this for a principle, that the life and member of an Englishman is in the power onely of the Prince and his Lawes, when any of his Subiects is spoyled either of life or member, the Prince is endamaged thereby, and hath good cause to aske account how his subiects should come to that mischiefe. And againe, for so much as the Prince who gouerneth the Scepter, and holdeth the Crowne of England, hath this in his care and charge, to see the Realme well gouerned, the life, members, and possessions of his subiects kept in peace and assurance: hee that by violence shall attempt to breake that peace and assurance, hath forfaited against the Scepter and Crowne of England: and therefore not without a cause in all inquisitions, and indictments, if any be found by the twelue men to haue offended in that behalfe, straight the Prince is said to be partie, & he that shall speake for the prisoner shall be rebuked, as speaking against the Prince. Neuertheless, it is neuer forbidden, but the prisoner, and party Defendant, in any cause may alleadge for him all the reasons, meanes, and defences that hee can, and shall bee peace-

Sauing in Appeales, & vpon a special Plea, Actio, is the parties whole Suit: Breue is the Kings Precept.

peaceably heard & quietly. But in those Pleas and Pursuits of the Crowne, Procuror or Aduocate he gets none, which in Ciuill and Pecuniary matters (bee it for Land, Rent, Right or Possession, although he pleade against the Prince himselfe) he is neuer denyed.

Pleas Ciuill be either personall or reall: personall, as contracts or for iniuries: real, be either possessory, to aske, or to kéepe the possession: or in rem, which we call a Writ of right. For that which in the Ciuill Law is called actio or formula, wee call Writte in English, so the Grékes called it word for word γράφη and in our barbarous Latine we name it breue.

And as the old Romans had their actions some ex iure Ciuili, and some ex iure prætorio, and ordinarily Prætor dabat actiones, & formulas actionum: so in England we retayne still this, and haue some Writs out of the Chancery, other out of the Common Pleas or the Kings Bench.

Chap. XI.

Of the chiefe Tribunals, Benches, or Courts of Engand.

IN times past (as may appeare to him that shall with iudgement read the Histories and Antiquities of England) the Courts and Benches followed the King and his Court whereseoeuer he went, especially shortly after the Conquest. Which thing being found very cumbersome, painfull, and chargeable to the people, it was agréed by Parliament, that there should be a standing place where Iudgement should be giuen. And it hath long time bin vsed in Westminster Hall, which K. William Rufus builded for the Hall of his owne House. In that Hall be ordinarily séene three Tribunals, or Iudges Seates. At the entry on the right hand the Common Pleas where ciuill matters are to be pleaded, specially such as touch lands or con-

or Contracts. At the vpper end of the Hall on the right hand, the Kings Bench, where Pleas of the Crowne haue their place. And on the left hand sitteth the Chancellor accompanyed with the Maister of the Rolles, who in Latine may be called Custos Archiuorum Regis, and certaine men learned in the Ciuill Law, called Maisters of the Chancery, in Latine they may be called Assessores.

Chap. XII.

Of the times of pleading called Termes: and of the Chancelour and Chancerie.

TWo things may bee mooued in question here, how all England (being so long and so large, and hauing so many shires and prouinces therein) can bee answered of Iustice in one place, and in three Benches, be they neuer so great? Another (whereas the Kings Bench is exercised in criminal causes, and in all Pleas of the Crowne, and the common Place in all ciuill Causes, (reall, and personall) what place then hath the Chancery?

The first question will seeme more marualous, and haue more occasion of doubt, when I shall also tell that the Law is not open at all times, no, not the third part of the yeare. But where all other Cities and Common-wealths had all the yeare Pleas, Suites, and Iudgements, except for certaine Holy-dayes and Harueſt, and Vintage, or when for some vrgent cause the Law was commanded to be stopped, which is called Iustitium: contrary in ours it is but few times open. That is onely foure times in the yeare, which they call Termes: After Michaelmas about tenne dayes, during fiue or sixe weekes at the least. After Christmas about a moneth endureth by the space of three Weekes. Then from xviij.

dayes after Easter by the space of three weekes and odde dayes. Likewise from the first or seuenth day after Trinitie Sunday, during two weekes and odde dayes. All the rest of the yeares there is no pleading, entring, nor pursuing of actions. This small time, and all that but in one place, may seeme very iniurious to the people, who must be faine to suffer much wrong for lacke of Iustice, and of place and time to pleade: but vnto that hereafter I intend to answere more fully, and in the meane while that shall suffice which the wise Cato answered to one who mooued, that the pleading place in Rome might be couered ouer with Canuasse, as their Theaters were, to the intent that the Plaintiffes and Defendants that were there might pleade their matters more at ease, and not bee in so much danger of their health by the heat of the Sunne striking full and open vpon their heads, which was no small griefe and disease specially at Rome. Nay (saith Cato) for my part I had rather wish that all the wayes to the place of pleading were cast ouer with Gallowops, that the feete of such as loue so well pleading, should feele so much paine of those pricks in going thither, as their heads doe of the Sunne in tarrying there: hee meant that they were but idle, hot heads, busie-bodies, and troublesome men in the Common-wealth that did so nourish pleading: good labourers and quiet men could bee content to end their matters at home by iudgement of their Neighbours and Kinsfolke, without spending of their money vpon Procurers and Aduocates, whom we call Atturnies, Counsellors, Sergeants, and generally men of Law. Those he accounted profitable Citizens who attend their honest labour and businesse at home, and stand not waiting and gaping vpon their Rolles and Processe in the Law: as for the other, by his Iudgement, it was no matter what mischiefe they suffered. To the other question of the Chancerie, this

this I anſwere: That our Law which is called of vs the common Law, as yée would ſay Ius ciuile, is, and ſtandeth vpon ἀκριβολογίαις, that is, Ius ſummum: and their Maximes be taken ſo ſtreightly, that they may not departe from the tenour of the wordes, euen as the old Ciuill Law was. And therefore as that lacked the helpe of a Prętor (which might moderari illud ius ſummum, giue actions where none was, mittigate the exactneſſe and rigour of the Law written, giue exceptions as metus, doli mali, minoris ætatis, &c. for remedies, and maintaine all wayes æquum bonum:) the ſame order and ranke holdeth our Chancery, and the Chancellour hath the verie authority herein as had the Prętor in the old Ciuill Law before the time of the Emperours. So hee that putteth vp his Bill in the Chancery, after that hee hath declared the miſchiefe wherein he is, hath reliefe as in the ſolemne Forum. And for as much as in this caſe hee is without remedie in the common Law, therefore hee requireth the Chancellor, according to equity and reaſon to prouide for him, and to take ſuch order as to good conſcience ſhall appertaine. And the Court of the Chancery is called of the common people the Court of Conſcience, becauſe that the Chancelor is not ſtrayned by rigour or formes of wordes of Law to iudge, but ex æquo and bono and according to conſcience as I haue ſaid. And in this Court the vſuall and proper forme of pleading of England is not vſed, but the forme of pleading by writing, which is vſed in other Countries according to the Ciuill Law: and the tryall is not by twelue men, but by the examination of witneſſe, as in other Courts of the Ciuill Law.

Out of this Court, as from the perſon of the Prince come all manner of originall Writs. The Declaration of Writs is at large ſet downe in the Regiſter of Writs, & in the Natura breuiũ. Out of this Court come moſt commonly Cõmiſſions, Patents, Licences, Inquiſitions, &c.

The Iudges of this Court are the Lord Chancelour of England, Assistants, the Master of the Rolles, and sixe Masters of the Chancerie, which are commonly Doctors of the Ciuill Law.

Officers are the sixe Clarkes of the Chancerie, the Clarke of the Crowne generall, the Register, Controler of the Seale, two Examiners, the Clarke of the Hamper, the three Clarkes of the Petty-bag, the Cursitors, the Sergeant of the Mace.

The Lord Chancellor is the Keeper of the great Seale, and hath it carried with him whersoeuer he goeth.

The Master of the Rolls is the Keeper of the Records, Iudgements, and Sentences giuen in the Court of Chancerie.

The sixe Masters are Assistants to the Court, to shew what is the equitie of the Ciuill Law, and what is Conscience.

The Clarke of the Crowne is the chiefe Guardian of all the matters of the Crowne: what are Crowne matters, and Pleas of the Crowne, see in the learned Booke of Stanford called the Pleas of the Crowne.

The sixe Clarkes are the Attornies, as well for the Plaintiffe, as Defendant, in euery Suite in the Court.

The Register is the Engroller and Keeper of the Decrees, Publications, Orders, and Iniunctions issuing out of this Court.

The two Examiners are such as take the Examination of the Witnesses brought to produce or represent any thing in Suite in this Court; and to put their Depositions and Answeres made to their Interrogatories in writing.

The Controler of the Seale is to see and allow of all the Writs made in this Court.

The Clarke of the Hamper is he that doth receiue the fines due for euery Writ sealed in this Court.

The

The three Clarkes of the Petty-bag, are they that receiue the Offices that are found in the Court of Wards.

The Cursiters are Clarkes appointed to their seuerall shires, which doe write originall Writs that belong to this Court of the common place.

The Sergeant carryeth the Mace before the Lord Chancelor, and is to call any man before him at his commandement.

The Processe in the Chancerie is a Sub pœna, which is but to call the partie before him vpon a paine, as vpon paine of xl.li. &c. And this is the way vsed to bring in the party, or else by the Sergeant as before.

The punishment is, if the party will not come in, or comming in, will not obey the order of the Court, imprisonment during the pleasure of the Lord Chancelor.

The order of proceeding is by Iniunctions, Decrees, and Orders which are to bind the partie, and if he resist, his punishment is imprisonment.

The matter in this Court are all causes wherein equitie and extremitie of Law doe striue, and where the rigour of Lawes haue no remedie, conscience and the moderation of Summum ius hath sufficient.

And here is to be noted, that conscience is so regarded in this Court, that the Lawes are not neglected, but they must both ioyne and meete in a third, that is a moderation of extremitie.

This Court is called of some Officina Iuris Ciuilis Anglorum, because out of this Court issue all manner of Processe, which giue the partie his cause of action in other Courts.

Chap. XIII.

Of Iudges in the Common Law of England, and the manner of tryall and pleading there.

The Prince out of the numbers of those who haue bin Counsellours or Sergeants at the Law, which bee those who in Latine are called causidici, or Aduocati, chooseth two of the most approued for Learning, Age, discretion, and exercise, of whom the one is called chiefe Iustice of the Kings Bench, or simply chiefe Iustice, the other of the common Place, and others to the number of six or more, which haue each an ordinarie Fée or Stipend of the Prince.

These doe sit at such dayes as be terme, which may be called Dies legitimi iuridici, or fasti, in their distinct places as I haue said before. There they heare the pleading of all matters which do come before them: and in ciuill matters where the pleading is for mony, or land or possession, part by writing, and part by declaration and altercation of the Aduocates the one with the other, it doth so proceed before them till it doe come to the issue, which the Latines doe call statum cause, I doe not meane contestationem litis, but as the Rhetoritians do call statum, we doe most properly call it the issue, for there is the place where the debate and strife remayneth (as a water held in a close and darke Vessell issueth out, and is voyded and emptied) and no where else: that stroke well striken is the departing of all the Quarrels. Issues or status in our Law be ordinarily two, facti and iuris.

Chap. XIV.

Of the Kings Bench.

The Kings Bench is the Kings Court, so called because vsually the Kings haue sitten there, and also be-

becauſe that therein all cauſes are handled which appertayne to the Crowne: and ſuch cauſes as wherein the King or Quéene is a partie, if they properly appertaine not to ſome other Court.

The Judges of the Kings Bench are the Lord Chiefe Juſtice of England, with other his Companions aſſiſtant in giuing Iudgement.

The Sergeants and Counſellours doe debate the Cauſe.

The ſentence is giuen by the chiefe Juſtice, the others all or the moſt part aſſenting, as it ſhall appeare to be in other Courts likewiſe. If they cannot agrée, then is the matter referred to a demurre in the Exchequer Chamber, before all the Juſtices of both the Benches, viz. the Kings Bench, and the Common Pleas, and the Lord chiefe Baron of the Exchequer.

The Officers in the Kings Bench, are the chiefe Protonothary, the Secondary, the Clarke of the Crowne, the Clarke of the Exigents, the Clark of the Papers, the Cuſtos Brevium, and Cuſtos Sigilli.

The Protonotharie is he, that recordeth all Iudgements, Orders, and Rules in this Court, and all Verdicts giuen, being not of Crowne matters.

The Secondarie is the Protonotharies Deputie, for the ſaid Cauſes, and hee is the képer and maker vp of theſe Records in Bookes.

The Clarke of the Crowne, is to frame all Indictments of Felony, Treaſon, Murther, &c. all manner of Appeales, and after to record them and enter the Verdict and to make and kéepe the Records touching theſe matters.

The Clarke of the Exigents is to frame all manner of Proceſſes of Exigi facias, which doe iſſue out of that Court to out-law any man, and to record the out-lawrie.

The

The Clarke of the Papers is he that keepeth all Rols, Scripts, and Pleadings, and other things in writing which are not of Record.

The Custos Brevium is he which fileth all the Writs Judiciall and Originall, after the Sherife hath returned them, he is chargeable if any be embeseled or privily conveyed away from the File.

The Custos Sigilli is he that doth kep the Seale, and seeketh all iudicial Writs & all Patents, Licenses issuing out of this Court, and taketh the Fee due for them, and thereof to make his account.

There are certaine Atturnies belonging to this Court, in number as the Protonotary shall appoint: those are for Plaintiffes and Defendants in euer cause, and they frame and make the Pleadings.

The manner of proceeding in this Court is by Latitat, Arrest, and Bill.

The Latitat is to bring the partie in, when hee is not to be found or will not appeare and answere.

Arrest is when the partie is arrested, and then is driuen to find bayle, viz. two sufficient Sureties or more as the case shall need.

By Bill the Suite is when the party is in Custodia Mareschalli, and is from thence brought to answere.

The Matters in this Court are properly all matters of the Crowne, whereof see Standfords Booke aforesaid.

In these they proceed by Indictments, Verdict, Appeales, improperly all Suites wherein the King is a party, or haue any losse. Such are Conspiracies, Champarties, Imbraser, Maintenance, Decies tantum maymes, Slanders, Actions, sur le case: of these see Natura breuium.

CHAP.

Chap. XV.

Of the Court of Common Pleas.

The Court of Common Pleas is the Kings Court, wherein are holden all Common Pleas betweene Subiect and Subiect, of all matters of Common Law: ſo called, for that it ſerueth for the exact and preciſe adminiſtration of the Common Law.

The Iudges in this Court are, Lord Chiefe Iuſtice of the Common Pleas, three other his Aſſociates. The Sergeants at the Law, whoſe number is ſometimes more, ſometimes leſſe, at the pleaſure of the Prince. Theſe all are ſworne to ſerue the turne of the Common Law at this Barre.

Two of them are alwayes appointed to ſerue the Princes turne in what Court ſoeuer, and are called the Kings Sergeants.

The Officers of this Court are the Cuſtos Breuium, three Protonotaries, the Clarke of the Warrants, the Clarke of the Eſſoynes, diuers Atturnies, Filliſers for euery ſhire, Exigenters for euery ſhire, the Clarke of the Iuries, the Cirographer for Fines, the Clarke of the Kings Siluer for Errours in this Court commited, the Clarke of the Seale, as before for the Kings Bench.

The Cuſtos Breuium is the chiefe Clarke in the Court, and he hath the cuſtodie of all the Writs whatſoeuer returnable into this Court, come they eyther at the day of the returne, or after the day which is called Poſt diem.

The Protonotaries are they which after the parties haue appeared in Court, doe enter the matters in ſuite, and make the pleadings, and enter them.

The Filliſers are they which make vp all meane Proceſſe vpon the originall Writs, and the ſame Writs re-

turned by the Sherife, are by the Atturnies deliuered to the Custos Breuium to file or string, there to remayne of Record.

The Exigenters are such as make out the Exigentes and Writs of Proclamation to euery County, where the parties are, that vpon the same Proceſſe or Summons will not appeare.

The Clark of the Warrants is he which doth take the Warrants of an Atturney, which shall prosecute for the Plaintife or Defendant: & is he that enrolleth all Deeds acknowledged before the Iustices of the same Court.

The Clark of the Essoynes, is he which doth Essoyne the Defendants in euery action, before the day of his appearance.

Any Essoyne is an ordinary delay by Office of Court in action: and the Officer before whom the Clarke is to take the Essoyne, is the puny Iustice in the Common Pleas, who for that purpose, sitteth three dayes before the Tearme.

The common Atturnies are such as are allowed in this Court, by the Lord chiefe Iustice of the cõmon pleas, & his assistants to prosecute or defend, according to the instructions of their Clients, for the Plaintife or Defendant.

The Clarke of the Iuries is he that doth make the Venire facias, to the Sherife to warne the Iuries by.

The Cirographer is he that hath the Writ of couenant with the concord brought vnto him, and hee maketh Indenture tripartite, whereof two are deliuered to the partie for whose vse the fine is acknowledged. And the third part is reserued with him. And all the Proclamations of the same fine according to the Statutes made, are endorsed on the third part remayning, and it is commonly called the foot of the fine.

The Clarke of the Kings Siluer is a distinct Office of the

the fines, and is he who ſetteth downe the mony that his Maieſty is to haue for the fine, according to the yearly value of the land confeſſed, knowne, deposed or agréed vpon.

All Errors in this Court committed, are reformed in the Kings Bench, before the Lord chiefe Iuſtice, and other Iuſtices there aſſiſtant by Writ of Error.

There is alſo the Clarke of the Out-lawries, who is the Kings Atturny generall, and he entreth the Out-lawry for the King, after the Exigent deliuered: and he maketh all the Writs of Out-lawry: and none are to bee made but by him.

The matters of the Common Pleas, are all Suits of Common Law commenced by any Writ Originall, Reall, or Perſonall.

Reall are ſuch as touch the Inheritance, or Fée of any man.

Perſonall are ſuch as touch tranſitorie things, as Goods, Chattels, perſonall Wrongs, &c.

The difference betweéne a Writ Originall, & a Writ Iudiciall, is this: the Originall ſaith in the end of it (in the perſon of the King or Quéene) teſte me ipſo, or me ipſa, apud Weſtmonaſterium. The Iudiciall Writ ſaith in the end, Teſte Chriſtophoro Wray, or Teſte Iacobo Dier, or ſuch other as ſhall be the Lord chiefe Iuſtice of either of thoſe Benches.

The order of Proceſſe how they follow the one after the other. In this Court is firſt a Summoneas in ſome action, then Attachias, but in moſt a Capias, then a Capias pluries, then Exigi facias, and a Proclamation into the County where the Defendant dwelleth.

The Summoneas is the originall, and goeth out of the Chancery, and is directed to the Sheriſe, to bring the partie by a day.

The Sheriſes order in ſeruing this Writ, is to goe himſelfe, or his Bailife, to the Land and there to garniſh

the partie, by ſticking vp a ſticke on his Land, which done, the Sherife returneth two common pledges, Iohannes Do, and Richardus Ro. and two Summonees, Richardus Den, Henricus Fen. After the Summonées, if the partie come not in, iſſueth out an Attacheas in nature of a Precept, to authorize the Sherife to goe to his Land or houſe, and there to take a pledge for his appearance.

But if the party Plaintife meane to out-law the Defendant, he getteth a Summoneas out of the Chancerie to the Sherife to warne the party, who returneth nihil habet, &c. Then the Plaintife getteth a Capias to take his body, and then an Alias capias, then a Pluries capias, to all which the Sherife returneth in order as they bee giuen out, Non eſt inuentus. After which if the partie appeare not, goeth out to the Sherife the Exigi facias, and a Proclamation to proclaime the party in fiue ſeuerall County dayes: after which Proclamations if he doe not appeare, hee is returned Quinto exactus, & non comparuit & ideo vt lagatus, vnleſſe hée doe firſt purchaſe a Superſedeas, to the Court to ſurceaſe. The Superſedeas is granted at the ſuite of the Defendant, to ſtay the out-lawry, & is an apparance to the ſuit for the Defendant, ſuggeſting to the Court, that his Exigent improuide emanauit, ſhewing that the Defendant was alwayes readie to appeare by his Atturney. This done the Plaintife declareth, the Defendant anſwereth, if the anſwer be iſſuable they proceed to tryal. The manner of proceeding is either to ioyne iſſue, and ſo to paſſe to verdict, or elſe to demurre. The tryall is by verdict, when the queſtion is made de facto, as where the matter was done, when, by whom, &c.

CHAP.

Chap. XVI.

Of the two manner of Issues.

IF the question be of the Law, that is, if both the parties doe agrée vpon the fact, and each doe clayme that by Law he ought to haue it, and wil stil in that sort maintaine their right, then it was called a demurrer in Law where if in the Law the case séeme to the Iudges that sit doubtfull, it is called a Checker Chamber Case, and all the Iudges will méete together, and what they shall pronounce to bee the Law, that is held for right, and the other partie loseth his Action or Land for euer. If the Sergeants or Councellers doe stand vpon any point in the Law which is not so doubtfull, the Iudges who bee taken for most expert, bids him goe forward, and if hée hath no other to say, but standeth vpon that point of the Law, that bidding goe forward, is taken that hee loseth his action, and the defendant is licensed to depart without a day: and this is where the Issue or Question is of the Law or Iuris. So is that case where the Law is not doubtfull, according to the matter contayned in the Declaration, Answere, Replication, Reioynder, or Triplication, the Iudge out of hand decideth it. And it is the manner that each partie must agrée to the other still in the Fact which he cannot denie. For if hée once come to deny any Déed as not done, not his Writing, that the man by whom the Aduersarie claymeth, was not the Aduersaries Ancestor, or the Euidence which the Aduersarie bringeth, is not true or, that his gift was former, or any such like exception, which is auayleable to abate the action, or barre the partie, and the other ioyneth in the affirmatiue, and will auerre and prooue the same, this is called the Issue, and immediately all question of the Law ceaseth as agréed by both the parties, that there is no

But sometimes it is determined by the same Court only.

This should be meant of a respondes ouster, when the opinion is against him that taketh an exception, which is not peremptory he may deny it by protestation.

queſtion in the Law. Then as the Iſſue facti is found by the twelue men of whom wee ſhall ſpeake hereafter, ſo the one partie or other looſeth his cauſe and action: ſo that contrary to the manner of the ciuill Law, where firſt the fact is examined by witneſſes, indices, torments, and ſuch like probations, to finde out the truth thereof, and that done, the Aduocates do diſpute of the Law, to make of it what they can: ſaying, ex facto ius oritur. Here the Sergeants or Counſellors before the Iudges doe in paſſing forward with their pleading determine and agrée vpon the Law, and for the moſt part, and in a manner all actions, aſwell criminall as ciuill, come to the Iſſue and ſtate of ſome fact which is denyed of the one partie, and auerred of the other, which fact being tryed by the twelue men, as they finde, ſo the action is wonne or loſt. And if a man haue many peremptory exceptiõs (peremptory exceptions I cal, only thoſe which can make the ſtate and Iſſue) becauſe the twelue men be commonly rude & ignorant, the party ſhal be compelled to chooſe one exception whereupon to finde his Iſſue, which choſen, if hée faile in that by the verdict of twelue men, he looſeth his action and cauſe, and the reſt can ſeue him for nothing.

Hauing ſéene both in France and in other places many deuiſe Edicts and Ordinances, how to abridge Proceſſe, and to find how that long Suites in Law might be made ſhorter, I haue not perceiued nor read, as yet, ſo wiſe, ſo iuſt, and ſo well deuiſed a meane found out as this by any man among vs in Europe.

Truth it is, that where this faſhion hath not béene vſed and to them to whom it is new it will not be ſo eaſily vnderſtood, and therefore they may peraduenture bée of contrary iudgement: but the more they doe weigh and conſider it, the more reaſonable they ſhall find it.

How the Iſſue, Queſtion, or ſtatus Iuris is decided, I haue told: now I will ſhew how it is tryed when it doth

come

come to the Queſtion, State, or Iſſue of the Deed or Fact. And firſt I muſt ſpeake more largely of the manner of proceeding in the Proceſſe, and of ſuch perſons as be neceſſary for the execution thereof.

Chap. XVII.

Of the Sheriſe of the Shire, and of the Court of Exchequer.

The Romanes had to execute the Commandements of the Magiſtrates, Lictores, Viatores, Accenſos. The Ciuill Law ſince that time hath other names, termes, and Officers. The execution of the commandements of the Magiſtrates in England, is ordinarily done by the Sheriſes. The Sheriſe (which is as much to ſay as the Reeue or Baily of the Shire) is properly word for word Quæſtor Prouinciæ, it is he which gathereth vp and accounteth for the profits of the ſhire, that come to the Exchequer.

Scats in ancient Saxon is that which we by a borrowed terme cal treaſure, whereof is deriued Scaccarium, ſignifying a Court dealing with the Kings treaſure or reuenues, and alſo Eſcaetor, that is an Officer which imployeth the Kings profit.

The Exchequer (which is Fiſcus Principis, or Ærarium publicum, and I cannot tell in what language it is called Scaccarium, ſome thinke it was firſt called Statarium, becauſe that there was the ſtable place to account for the Reuenues of the Crowne, aſwell that which came of Patrimony, which we call the Demeaſnes, as that which commeth of other incident requiſitions, bee they Rents, Cuſtoms, Tenths, Quinzieſmes, Tares, ſubſidies wherſoeuer the Prince or his Court be according to the time and occaſion,) was a place ſtable, continuall, and appointed for to reckon and account. The hearers of the account (who in Latine may be called Tribuni ærarij) haue Auditors vnder them, which the Latines doe call Rationales, but they are the chiefe for the Accounts of the Prince, and may be called Iuridici rationales, in Engliſh we call them Barons of the Exchequer, whereof is one who

who is called the chiefe Baron, as Tribunus, or Iuridicus rationalis primus, or princeps, with others to them assistant: the Chancellor of the Exchequer, two Chamberlaines, and Atturney Generall. The chiefe of all is called high Treasurer of England, as you would say in Latine, Supremus ærarij Anglici Questor, or Tribunus ærarius maximus.

He hath the charge & képing of the King or Quénes Treasure, & many Officers are at his sole appointment and to him accountant, as wel in the Tower, Exchequer, as elsewhere, as Auditors in the Mint, Auditors and Tellers in the Exchequer, Receiuers, &c.

The Chancellour is the vnder Treasurer, and is Gouernour of the Court, vnder the high Treasurer. Many Officers also are at his appointment.

The chiefe Baron is the Iudge in Law causes incidēt to this Court, the three other Barons are assistants.

The Atturney is the Atturney generall, to defend the Kings Right, and to peruse all Grants, Particulars, Suites and Causes handled in this Court. There are common Atturnies besides, which serue for the Suiters of this Court.

The other Officers are two Remembrancers, two Clarkes of the Pipe, two of the first Fruits and Tenths.

The Remembrancers are those which kéepe all the Records of the Exchequer betwéene the King and his Subiects, and enter the Rules and Orders there made, the one is for the Prince, the other is for the Lord Treasurer.

The Clarkes of the Pipe are those that make Leases vpon particulars, and receiue the Sheriffes accounts, those receiue also the bonds & titles of other Assurances.

In the Office of the first Fruits, are receiued all first Fruits due to his Maiesty by Bishops, Deanes, and all Ecclesiastical Persons, answerable by order of the Law.

Other

Other Officers are Tellers, Auditors, Collectors, Rent-gatherers, Taile-makers, &c.

The matters of this Court are all penall punishments as intrusions, alienations without licence, penall forfaitures vpon popular actions (as a popular action is while the one part is giuen to the Informer, the rest to the Prince.) Of these sée the whole bodie of Statutes at large or in Rastals Collection.

In this Court are handled all Payments, Accounts, Expences of the Kings Reuenues.

The vsuall Processe of this Court is a Sub pœna out of this Court, or a Messenger to call the partie.

In this Court bee heard Quadruplatores, which wee call Promoters, which bee those that in popular and penal actions be delatores, hauing thereby part of the profit by the Law assigned. In this Court if any question bee, it is determined after the order of the common Law of England by the twelue men, as I haue said: and all Customers which were in Latine called Publicani, in Greek Telonai, doe account in this Office.

The Sherife of the shire is called in our common Latine Vicecomes, as one would say, Vicarius comitis, or Procomes, doing that seruice, to attend vpon the execution of the Commandements of the Tribunals or Iudges which the Earle or Countie should doe: which Earle or Countie for the most part was attending vpon the Prince in the Warre, or otherwise about the Prince, as the word beareth Comes Principis: whereby it may appeare, that the chiefe Office of the County or Earle, was to sée the Kings Iustice to haue course, and to be well executed in the shire or County, and the Princes Reuenues well answered, and brought in Ærarium Principis, which is called of vs the Treasurie.

If any fines or amercements which in Latine be called Mulctæ, bee leuyed in any of the said Courts vpon

any man, or any arrerages of accounts by the Latines called reliqua, of such things as is of customes, tares, subsidies, or any other such occasions, the same the Sherife of the shire doth gather, and is respondent therefore in the Exchequer. As for other ordinary Rents of Patrimoniall lands, and most commonly for the tares, customes, and subsidies, there be particular Receiuers and Collectors which doe answere it into the Exchequer. The Sherife hath vnder him an vnder Sherife at his charge and appointment, learned somewhat in the Law, especially if he be not learned himselfe, and diuers Bailifes which be called errants, whom he makes at his pleasure, who can know each land and person in the shire, and their abilitie, to goe vpon Enquests either to destraine, or to summon him to appeare whom the Sherife shall appoint, and for this cause to the Sherifes, as to the Minister most proper of the Law the Writs be directed.

When any thing commeth to an Issue of the Deed or Fact, there is a Writ and writing directed to the Sherife of the shire where the Land is, whereupon the Controuersies, or where the mandeth of whom the money is demanded, which Writ is called Venire facias. Then after the same effect an alias, pluries, or distringas, according to the nature of the action to the returne of the Sherife. And if for any disobedience of not comming and appearing there be a fine (which the Latines doe call Mulcta) set vpon any Iurors head, the Sherife is charged with it, and taketh the distresses which in Latine is called Pignora, and answereth therefore to the Exchequer. The Sherife is also readie by himselfe or by his vnder Sherife, to serue as well the Iustices of Peace in their quarter Sessions, as the Iustices called Itinerantes in their great Assizes, when they come into the shire, which is twice in the yeare to dispatch and hold actions criminall and ciuill depending at the Common Law, and which be

some

come now to the Iſſue. He hath alſo the charge of all the Priſoners committed to the Priſon, which wee call the Goale, and when any is condemned to dye, it is his charge to ſée the ſentence executed. To be ſhort, he is as it were the generall Miniſter, and higheſt for execution of ſuch commandements, according to the Law, as the Judges ordayne, and this is enough for the Sherife.

Chap. XVIII.

Of the twelue men.

Of what manner and order of men in the Common-wealth the twelue men bee, I haue alreadie declared. The Sherife alwayes warneth foure and twentie to appeare, leſt peraduenture any might be ſicke or haue a iuſt cauſe of abſence: and if there bee not enow to make an Enqueſt, the abſents be amerſed. For although they be called twelue men, as a man would ſay duodecē viri, yet if they bee twelue, twentie, or the whole number of foure and twentie, that is no matter, twelue they muſt be at leaſt to make an Enqueſt, or as ſome call it a Queſt. And Enqueſt or Queſt is called this lawfull kind of triall by twelue men. In actions ciuill, which is either of Contracts or for Land, or Poſſeſſion, when ſo many of thoſe that bee warned appeare at the call, as bee able to make an Enqueſt, which as I ſaid before bee no leſſe then twelue, either part when they be come taketh their challenges againſt ſo many of them as they will, which bee, that he may not ſpend ſo much Land a yéere, he is allyed, fēd, ſeruant to his aduerſe partie, he is his enemie, &c. And two of the whole number doe try, and allow or diſallow the reſt.

If after exceptions, there bee ſo many reiected that there is not a full Enqueſt, in ſome caſes that day is loſt, in ſome the Enqueſt is filled ex circumſtātibus: when the

queſt is full, they bée ſworne to declare the truth of that Iſſue according to the euidence, & their conſcience. Then the Sergeants of eyther ſide declare the Iſſue, and each for his Client ſayth as much as hée can. Euidences of Writings be ſhewed, Witneſſes be ſworne, and heard before them, not after the faſhion of the Ciuill Law, but openly, that not only the twelue but the Iudges, the parties, and as many as bee preſent may heare what each witneſſe doth ſay: The aduerſe party, or his Aduocates which we call Counſellors and Sergeants, interrogateth ſometime the Witneſſes, and driueth them out of countenance.

Although this may ſeeme ſtrange to our Ciuilians now, yet who readeth Cicero and Quintilian, well ſhall ſée, that there was no other order and manner of examining Witneſſes, or depoſing among the Romans in their time. When it is thought that it is enough pleaded before them, and the Witneſſes haue ſaid what they can, one of the Iudges with a briefe and pithy recapitulation, reciteth to the twelue in ſumme the arguments of the Sergeants of either ſide, that which the Witneſſes haue declared, and the chiefe points of the Euidence ſhewed in writing, and once againe putteth them in minde of the Iſſue, and ſometime giueth it them in writing, deliuering to them the euidence which is ſhewed on either part, if any be, (euidence héere is called Writings of Contracts, authenticall after the manner of England, that is to ſay, written, ſealed, and deliuered) and biddeth them goe together.

When there is a Bayliffe charged with them to kéepe them in a chamber not farre off, without bread, drinke, light or fire: vntill they bee agréed: that is, till they all agrée vpon one verdict concerning the ſame Iſſue, and vpon one among them who ſhall ſpeake for them all when they be agréed: for it goeth not by the moſt part, but each man

man muſt agrée. They returne, and in ſo few words as may bee, they giue their determination: few I call ſixe, ſeuen, or eight words at the moſt (for commonly the Iſſue is brought ſo narrow, that ſuch number of words may be enough to affirme or to deny it) which done they are diſmiſſed to goe whether they will. The party with whom they haue giuen their ſentence, giueth the Enqueſt their dinner that day moſt commonly, and this is all that they haue for their labour, notwithſtanding that they come, ſome twenty, ſome thirty, or forty miles or more, to the place where they giue their Verdict, all the reſt is of their owne charge. And neceſſarily all the whole twelue muſt bee of that ſhire, and foure of them of the hundred where the Land lyeth which is in controuerſie, or where the party dwelleth who is the Defendant.

Chap. XIX.

Of parts of Shires called Hundreds, Lathes, Rapes, Wapentakes.

An Hundred, or Lath, Rape, or Wapentake is called of the diuiſions or parts of ſhires, in diuers Countries diuerſly named, after the manner and language of each Country. For the ſhires be deuided, ſome into ten, twelue, thirteene, fifteene, twenty, or thirty Hundreds, more or leſſe, either that they were at the firſt a Hundred Townes and Villages in each Hundred: and although now they bee but fifteene, twenty, thirty, forty, fifty, threeſcore, more or leſſe, yet it is ſtill called an Hundred, or elſe there were but ſo many at the firſt as be now, or a few more or leſſe, e they did find the King to his Warres an hundreth able men. Lath, and Rape I take to bee names of ſeruice, for that ſo many Townes in old time and in the firſt pouerty of the Realme did méete together in one day to carry the Lords corne into his barne, which

is called in olde English a Lath. Or that they met at commandement of the Lord to reape his Corne.

Wapentake I suppose came of the Danes, or peradventure of the Saxons. For that so many Townes came by their orders then, to one place, where was taken a musser of their Armour and Weapons, in which place from them that could not find sufficient pledges for their good abearing, their weapons were taken away: weapon or wapon in old English doe signifie all Armes offensiue, as sword, dagger, speare, lance, bill, bowes, arrowes.

Of the place where the Musters were taken, or where the said seruices were done, the hundreds, lathes, rapes, and Wapentakes, had and haue yet their names, which be most commonly good Townes, and it is to be thought at the first they were all such. But sometime now in places whereof the hundred hath the name, no mention nor memory of a Towne remayneth: such mutation time bringeth with it of all things. A hundreth hath one or two high Constables, who haue some authoritie ouer all the lower and particular Constables. Those high Constables bee made by the Iustices of the Peace of the shire, and each Hundred hath his Bailife who is made by the Lord if any hath that libertie, or else by the Sherife of the shire for the time being.

Chap. XX.

Of the Court Baron.

It may appeare strange that of thirtie six shires whereof each shire is deuided into diuers hundreds, each hundred containing diuers Parishes, all pleading should be but in one place, that is in Westminster Hall, & that but in certaine times of the yeare, making little more then one quarter of the yeare in the whole. And one would thinke that there should bee much lacke of Iustice and

and right, and much wrong taken without redreſſe. But it is not ſo: The people bring accuſtomed to liue in ſuch an equality of Iuſtice, & that in ſuch ſort, that the rich hath no more aduantage therein then the poore, the Proces and proceedings to the iudgement being ſo ſhort, and iudgements alſo being peremptory and without appellation: yet to helpe for ſmall matters where no great ſumme is in queſtion, there are other Courts. In euery ſhire from three weekes, to three weekes, the Sheriſe for ſmall things not paſſing forty ſhillings, and in certaine Hundreds and Liberties the Bayliſe likewiſe from three weekes to three weekes holdeth Plea. And whoſoeuer is poſſeſſioner and owner of a Manor, may hold from three weeks to three weeks, or at his pleaſure, of his Tenants and amongſt his Tenants, a Court called a Court Baron, and there his Tenants being ſworne make a Iurie, which is not called the Enqueſt, but the homage. Theſe principally doe enquire of the Copy-holders, and other Free-holders that be dead ſince the laſt Court, and bring in their Heires and next Succeſſors, and likewiſe of incrochment or intruſion of any of the Tenants againſt the Lord, or among themſelues. They make orders and Lawes amongſt themſelues, the paine of them if they be after broken, commeth to the Lord. And if any ſmall matter be in controuerſie, it is put to them, and commonly they doe end it. But theſe Courts doe ſerue rather for men that can bee content to bee ordered by their Neighbours and which loue their quiet and profit in their Husbandry more then to be buſie in Law. For whether party ſoeuer will, may procure a Writ out of the higher Court, to remoue the Plea to Weſtminſter.

In Cities and other great Townes there bee diuers Liberties to hold plea for a bigger ſumme, which doe determine as well as the Common Law and after the ſame manner, and yet for them that will, it may bee remoued to Weſtminſter Hall.

King

King Henry the Eight ordained first a President, Counsellors, and Iudges, one for the Marches of Wales, at Ludlow, or else-where: another for the North parts of England, at Yorke, where bee many causes determined. These two are, as be Parliaments in France. But yet if there be any matters of great consequence, the partie may moue at the first, or remoue it afterwards to Westminster Hall, and to the ordinary Iudges of the Realme, or to the Chancelor, as the matter is.

These two Courts do heare matters before them, part after the Common Law of England, and part after the fashion of the Chancerie.

Chap. XXI.

Of the Leete, or Law day.

Leete, or Law day is not incident to euery Manor, but to those onely which by speciall grant, or long prescription, haue such liberty. This was, as it may appeare, first a speciall trust and confidence and commission giuen to a few put in trust by the Prince, as is now to the Iustices of Peace, to see men sworne to the Prince, to take pledges and Sureties in that manner of one for another to answere for obedience and truth, to enquire of priuy Conspiracies, Frayes, Murders, and Bloudsheds, and to this was added the ouer-sight of Bread & Ale, and other Measures. Many times they that be out of the homage and Court Baron of that Manor and Lordship, be neuertheleſſe attrayned and answerable to come to the Leete. This Leete is ordinarily kept but twice in the yeare, and that at termes and times prescribed.

The Leete and Law day is all one, and betokeneth two or three words, Legitimum or iuridicum diem. Law the old Saxons called lant or lag, and so by corruption and chan-

changing of Language from Lant to Leete, vnderſtanding day, they which kéepe our full Engliſh terme, call it yet law-yad.

Chap. XXII.

Of the proceedings of cauſes criminall, and firſt of the Iuſtices of the Peace.

Before the manner of proceéding in cauſes criminall can be well vnderſtood, it will be neceſſary to ſpeake of three perſons, the Iuſtices of Peace, the Coroners, and the Conſtables. The Iuſtices of Peace be men elected out of the Nobilitie, higher and lower, that is the Dukes, Marquiſes, Barons, Knights, Eſquires, and Gentlemen, and of ſuch as be learned in the Lawes, ſuch, and in ſuch number as the Prince ſhall thinke méete, and in whom for wiſedome and diſcretion he putteth his truſt, Inhabitants within the Countie: ſauing that ſome of the high Nobility and chiefe Magiſtrates for honours ſake are put in all, or in the moſt of the Commiſſions of all the ſhires of England. Theſe haue no time of their rule limited, but by cõmiſſion frõ the Prince alterable at pleaſure. Iuſtices of Quorum.

At the firſt they were but foure, after eight, now they come commonly to thirtie, or fortie in euery ſhire, either by increaſe of riches, learning, or actiuitie in policie and gouernment. So many more being found, which haue either will, or power, or both, are not to many to handle the affaires of the Common-wealth in this behalfe. Of theſe in the ſame Commiſſion be certaine named, which be called of the Quorum, in whom is eſpeciall truſt repoſed, that where the Commiſſion is giuen to fortie or thirtie and ſo at laſt it commeth to foure or three, it is neceſſary for the perfourmance of many affaires, to haue likewiſe diuers of the Quorum. The words of Commiſſion be ſuch, Quorum vos *A B C D. E F.* vnum eſſe volumus.

The Iuſtices of the Peace bee thoſe in whom at this time for repreſſing of Robbers, Theeues & Vagabonds, priuy Complots & Conſpiracies, of Riots & Violences, and all other Miſdemeanors in the Common-wealth, the Prince putteth his ſpeciall truſt. Each of them hath authority vpon complaint to him made of any Theft, Robbery, Manſlaughter, Murder, Violence, Complots, Riots, vnlawfull Games, or any ſuch diſturbance of the peace, & quiet of the Realme, to commit the perſons whom hee ſuppoſeth offenders, to Priſon, and to charge the Conſtable or Sherife to bring them thither, the Iayler to receiue them, and kéepe them till he and his fellowes doe mét. A few lines ſigned with his hand is enough for that purpoſe: theſe doe méte foure times in the yéere, that is, in each quarter once, to enquire of all the miſdemeanours afore-ſaid: at which dayes the Sherife or his vnder Sherife with his Bayliſes be there to attend vpon him, who muſt prepare againſt that time foure Enqueſts of foure and twentie yeomen a piece, of diuers hundreds in the ſhire, and beſides one which is called the great Enqueſt out of the bodie of the ſhire mingled with all. Theſe fiue Enqueſts are ſworne before them to enquire of all Hereticks, traytors, theefts, Murthers, Manſlaughters, Rapes, falſe-moniers, extortioners, riots, routs, forcible entries, vnlawfull games, and all ſuch things as bee contrary to the peace and good order of the Realme, and to bring in their verdict. If they among themſelues vpon their owne knowledge doe find any culpable, they cauſe one of the Clarkes to make the Bill. And if any bee there to complaine vpon any man for theſe faults, hee putteth in his Bill, which Bill is preſented firſt to the Iuſtices ſitting vpon the Bench, to ſée if it be conceined in forme of Law, which done the complainant doth deliuer it to one of theſe Enqueſts, and after the complainant is ſworne, he declareth to them what he can, for the proofe of it. And if they

That is not alwayes & in all places obſeruee but onely concerning the grand Enqueſt.

find

find it true, they doe nothing but write on the backſide of it, billa vera, as ye would ſay, ſcriptum verũ, or accuſatio iuſta, or reus eſt qui accuſatur: Then he who is there named is called indicted. The manner of the Bill is ſuch, Inquiratur pro Domino Rege.

If they doe not finde it true, they write on the backſide, Ignoramus, and ſo deliuer it to the Iuſtices, of whom it is rent into pieces immediately: he that is indicted is accounted a lawfull Priſoner, and after that time looked more ſtraightly vnto. For this Indictment is no Conuiction: and if he be indited, and be not already in Priſon, the Sherife if he can find him, bringeth him into Priſon: if he cannot find him, proceſſe is made out againſt him, to render himſelfe Priſoner, or elſe he ſhall be out-lawed. So he is called three times in diuers Countie dayes to render himſelfe to the Law. The fourth is called the Exigent, by which he is out-lawed not rendring himſelfe, as ye would ſay: exactus or actus in exilium. The Out-law loſeth all his goods to the King for his diſobedience. But if after he will render himſelfe to anſwere to the Law, & ſhew ſome reaſonable cauſe of his abſence, many times of grace his Out-lawrie is pardoned. Theſe meetings of the Iuſtices of Peace foure times in the yeere, be called quarter Seſſions, or Seſſions of Enquiry, becauſe that nothing is there determined touching the Malefactors, but only the cuſtodie of them: and this kinde of proceeding which is by Inquiſition of the twelue men within themſelues, and their owne conſciences, or by denunciation of him that parteth in his Bill to the twelue, is called at the Kings Bench, and the King is reckoned the one partie, and the Publicke the other. The Iuſtices of the Peace doe meete alſo at other times by commandement of the Prince vpon ſuſpition of War, to take order for the ſafety of the ſhire, ſometimes to take Muſters of harneſſe and able men, and ſometimes to take order for the exceſſiue Wages of Seruants and

Laborers, for excesse of apparell, for vnlawfull games, for Conuenticles and euill order in Alehouses, & Tauernes, for punishment of idle and vagabond persons, and generally as I haue said for the good gouernment of the shire, the Prince putteth his confidence in them. And commonly euery yéere, or each second yéere in the beginning of Summer or afterwards, (for in the warme time the people for the most part bée more vnruly) euen in the calme time of Peace, the Prince with his Counsell chooseth out certaine Articles out of pnenall Lawes alreadie made for to represse the pride & euill rule of the popular, and sendeth them downe to the Justices, willing them to look vpon those points, and after they haue met together, and consulted among themselues, how to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the Law, they diuide themselues by thrée or foure: & so each in his quarter taketh order for the execution of the said Articles.

And then within certaine space they méete againe and certifie the Prince or his Priuy Councell, how they doe find the shire in rule & order touching those points, and all other disorders. There was neuer in any Common-wealth deuised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwayes as it were in a bridle of good order, and sooner looked vnto that they should not offend, then punished when they haue offended. For séeing the chiefe amongst them, their Rulers, haue this speciall charge, and doe call [illegible], and if occasion so do present, one or two presently [illegible] either punished, or sent to Prison for disobedience to those old Orders and Lawes, they take a feare within themselues, they amend, and doe promise more amendment. So that it is as a new furbushing of the good Lawes of the Realme, and a continuall repressing of disorders, which doe naturally rest among men.

But

But as the inuention of this, and the vſe and execution thereof is the moſt benefit that can bee deuiſed for the Common-wealth of England: ſo when it ſhal be miſuſed, diſſembled with, or be condemned, and be done pro forma tantum, and as they terme it in France, Par mainere d'acquit only, it will be the preſent ruine (though not at the firſt perceiued) of the Common-wealth. Of which the fault may be as wel in the Commanders for not making good choice, what, and how they command, as in the commanded, for not executing that which is commanded.

Chap. XXIII.

Of Hue and Cry, and Recogniſance taken vpon them that may giue euidence.

By the old Law of England, if any theft or robbery be done, if hee that is robbed, or hee that ſeth or perceiueth that any man is robbed, doe leuy Hue and Cry, that is to ſay, do cry & call for ayde, & ſay that a Theft or Robbery is done contrary to the Princes peace & aſſurance: the Conſtable of the Village to whom he doth come, and ſo make that Cry, ought to raiſe the Parith to ayde him and ſeek the Theefe, and if the Theefe be not found in that Parith, to go to the next and raiſe that Conſtable, and ſo till by the Conſtables and them of the Parith one after another. This Hue and Cry from Parith to Parith is carryed till the Theefe or Robber be found. That Parith which doth not his duty, but letteth by their negligence the Theefe to depart doth not only pay a fine to the King, but muſt repay to the party robbed his dammages. So that euery Engliſhman is a Sergeant to take the Theefe, and who ſheweth himſelfe negligent therin, doth not onely incurre euill opinion therefore, but hardly ſhall eſcape punihment: what is done with the Theefe or Robber when he is taken, I ſhall ſhew you hereafter. The ſame

manner is followed if any man be slaine, for straight the Murtherer is pursued of every man till he be taken. So soone as any is brought to the Justices of Peace by this Hue and Cry, by the Constable, or any other who doth pursue the Malefactor, he doth examine the Malefactor, and writeth the Examination, and his Confession: then he doth bind the partie that is robbed, or him that sueth, and the Constable, and so many as can give evidence against the Malefactor to be at the next Sessions of Gaole delinery, to give their evidence for the King. He bindeth them in Recognisance of ten pound, twentie pound, thirtie pound, forty or an hundred pound, according to his discretion, and the qualitie of the crime: which certified under his hand, is levied upon the Recognisance, if they fayle of being there.

Chap. XXIIII.

Of the Coroner.

But if any man, woman, or child, be violently slaine, the Murtherer not knowne, no man ought or dare bury the body before the Corroner hath séene it. The Corroner is one chosen by the Prince of the meaner sort of gentlemen, and for the most part a man séene in the Lawes of the Realme, to execute that office. And if the person slaine (slaine I call héere, whosoever hee be, man, woman, or child, that violently commeth to his death, whether it be by knife, poyson, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried before the Coroner do come (which for the most part men dare not do) hee doth cause the body to bee taken up againe, and to bee searched, and upon the sight of the body so violently come to his death, he doth empanell an Enquest of twelue men or moe, of those which come next by, be they strangers or

Inhabi-

Inhabitants, which vpon their Oaths, and by the sight or view of the bodie, and by such informations as they can take, must search how the person slaine came to his death, and by whom as the doer or cause thereof. These are not enclosed into a strait place, (as I told before of other Enquests) but are suffered to goe at large, and take a day, sometime after twenty or thirty dayes, more or lesse, as the fact is more euident, or more kept close, to giue their euidence, at which day they must appeare there againe before the said Coroner to giue their Verdict. So sometime the person to haue slaine himselfe, sometime the brother, the husband, the wife, the sister, some of acquaintance or stranger, such as God will haue reuealed, be taken. For whosoeuer they doe find as guiltie of the Murther, hée is straight committed to Prison, and this is against him in the nature of an Indictment, which is not a full condemnation, as yée shall sée hereafter.

The empanelling of this Enquest, and the view of the bodie, and the giuing of the Verdict, is commonly in the stréet in an open place, and in Corona populi: but I take rather that this name commeth, because that the death of euery Subiect by violence is accounted to touch the Crowne of the Prince, and to be a detriment vnto it, the Prince accounting that his strength, power, and Crowne doth stand and consist in the force of his people, and the maintenance of them in securitie and peace.

Chap. XXV.

Of the Constables.

These men are called in the elder Books of our Laws of the Realme Custodes pacis: & were at the first in greater reputation than they bee now. It may appeare that there was a credit giuen vnto them, not altogether vnlike to that which is now giuen to the Iustices of Peace. To this day if any affray chance to bee made the Con-

Conſtables ought and will charge them that be at debate to kéepe the Princes peace, and whoſoeuer refuſeth to obey the Conſtable therein, all the people will ſet ſtraight vpon him, and by force make him to render himſelfe to be ordered. Likewiſe if any be ſuſpected of Theft, or receiuing, or of Murther, or of man ſlaughter, the Conſtable may take ſuch perſons, yea enter into any mans houſe with ſufficient power, to ſearch for ſuch men till he finde them: and if he ſée cauſe, kéepe the ſuſpected perſon in the ſtockes, or cuſtodie, till he bring them before a Iuſtice of the Peace to be examined. But for ſo much as euery little Village hath commonly two Conſtables, and many times Artificers, Labourers and men of ſmall abilitie be choſen vnto that Office, who haue no great experience, nor knowledge, nor authoritie: the Conſtables at this preſent (although this they may doe vpon their owne authoritie) yet they ſéeme rather to bée as it were the Executors of the Commandement of the Iuſtices of Peace. For the Iuſtice of Peace as ſone as he vnderſtandeth by complaint that any man hath ſtolne, robbed, ſlaine, or any ſeruant or labourer without licence, hath departed out of his Maſters ſeruice, or any that liueth idle and ſuſpectedly, knowing once in what Pariſh he is, hée writeth to the Conſtable of the Pariſh, commanding him in the Princes name, to bring that man before him. The Conſtable dareth not diſobey. The man is brought and examined by the Iuſtice, and if the Iuſtice doe find cauſe, he committeth him to the ſame Conſtable to conuey him further to the Princes Gayle, where the party muſt lye, till the Iuſtices of Peace doe méete either at their Quarter Seſſions, or at their Gayle deliuery, & that the Law hath eyther condemned or acquitted him. Theſe Conſtables are called in ſome places Head-borowes, in ſome places Tithingmen, and be like to them who are called Conſuls in many Townes and Villages in France. The

One or two Conſtables Head-borowes or Tithingmen.

Conſta-

Conſtables are commonly made and ſworne at the Leets of the Lords, choſen thereto by the homage, and they kéep that office ſometime two, three or foure yéeres, more or leſſe, as the Parith doth agree. What Head-borough doth betoken, it is eaſily knowne, our Language doth declare him as the head or chiefe of the Borough or village: likewiſe Tithing man is the chiefe of the tithing. Conſtable ſéemeth to come of our olde Engliſh word Kinning, which is Kinningſtable as ye would ſay, a man eſtabliſhed by the King, for ſuch things as appertaine to pleas of the Crowne, and conſeruation of the Kings peace, and as I ſaid at the firſt, were in ſome more reputation, approching to that authority, which the Juſtices of Peace now doe hold.

Kinningſtable, is *Regia virgula*, the Kings rod or wand, ſignifying the Kings power or authority, a repreſentation whereof is the vſe of Maces and white Staues by Officers in the Common-wealth.

Chap. XXVI.

Of the Seſſions of Gaole deliuery, and the definitiue proceedings in cauſes criminall.

How Théeues and Murtherers and other Malefactors againſt the Crowne and Peace, are taken and brought into hold to anſwere to iuſtice, partly by hue and cry, partly by information, and partly by the diligence of the Juſtices of peace and the Conſtables: and how at the quarter Seſſions they be indicted, or els by the Coroners ye haue heard before. Enditemẽt (as ye may perceiue by that which is alſo gone before) is but a former iudgment of twelue men which be called Enquirers, and no definitiue ſentence, but that which in Latin is called Præiudicium, it doth but ſhew what opinion the Country hath of
,, he Malefactor: and therefore commonly men be indicted abſent, not called to it, nor knowing of it. For though a man be indicted, yet if when he come to the arraignment, there bee no man to purſue further, nor no euidence of witneſſe or other tryall & indices againſt him, he is with-

out difficultie acquitted. No man that is once indicted can be deliuered without Arraignement: For as twelue haue giuen a preindice against him, so twelue againe must acquit or condemne him. But if the prisoner be not indicted, but sent to prison vpon some suspition or suspitious behauiour, and none doe pursue him to the iudgement, first being proclaymed thus, A.B. prisoner standeth here at the Barre, if any man can say any thing against him, let him now speake, for the prisoner standeth at his deliuerance: If no man doe then come, hee is deliuered without any further Processe or trouble, agreeing first with the gayler for his fees. And these be called acquitted by Proclamation. Twice in euery yere, the one is commonly in Lent what time there is vacation from pleading in Westminster Hall, the other is in the vacation in Summer, the Prince doth send downe into euery shire of England certaine of his Iudges of Westminster Hall, & some Sergeants at the Law with commission to heare and determine iointly with the Iustices of the Peace all matters criminall, & all prisoners which belin the gaoles. These Iudges do go from shire to shire til they haue done their circuit of so many shires as bee appointed to them for that yere: at the end of the terme going before their Circuit, it is written and set vp in Westminster Hall, on what day and in what place they will be. That day there meeteth all the Iustices of the Peace of that shire, the sherife of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer.

The sherife hath ready for criminall causes (as I writ before at the Sessions of inquirie) foure, fiue, or sixe Enquests ready warned to appeare that day to serue the Prince, and so many more as hee is commanded to haue ready to goe in ciuill matters betwixt priuate men, which they call Nisi prius, because that word is in the Writ.

In the Towne house or in some open or common place

place, there is a Tribunal or a place of Iudgement, made aloft vpon the highest Bench, their sitteth the Iudges, which be sent downe in Commission, in the middest. Next them on each side sit the Iustices of Peace, according to their degree. On a lower bench before them, the rest of the Iustices of Peace, & some other Gentlemen, or their Clarkes. Before these Iudges and Iustices there is a Table set beneath, at which sitteth the Custos Rotulorum or keeper of Writs, Thescheter, the vnder sherife, and and such Clarkes as doe write. At the end of that Table there is a Bar made with a space for the Enquests, and twelue men to come in when they are called, behind that space another Bar, and their stand the Prisoners which be brought thither by the Gayler, all chayned one to another. Then the Cryer cryeth, and commandth silence. One of the Iudges briefly telleth the cause of their comming, and giueth a good lesson vnto the people. Then the Prisoners are called for by name, and bidden to answere to their names. And when the Custos Rotulorum hath brought forth their Indictments, the Iudges doe name one or two, or three of the Prisoners that are indicted, whom they will haue arraigned. There the Clarke speaketh first to one of the Prisoners: A.B. come to the Barre, hold vp thy hand. The Clarke goeth on: A. B. thou by the name of A.B. of such a Towne, in such a County, art indicted, that such a day, in such a place, thou hast slaine with force and armes an horse, which was such a ones, of such colour, to such a valour, and carryed him away seloniously, & contrary to the peace of our Soueraigne Lord the King. What sayest thou to it, art thou guilty or not guiltie? If he will not answere, or not answere directly guiltie or not guiltie, after he hath bene once or twice so interrogated, he is iudged mute, that is dumbe by contumacie, and his condemnation is to bee prested to death, which is one of the cruellest deathes that may bee: hee is

laid vpon a Table, and another vpon him, and so much waight of stones or Lead laid vpon that table, while as his bodie be crushed, and his life by that violence taken from him. This death some strong and stout hearted man doth chuse, for being not condemned for felony, his bloud is not corrupted, his Lands nor goods confiscate to the Prince, which in all cases of felony are commonly lost from him and his heires, if he be fore-iudged, that is condemned for a Felon by the Law. If he confesse the inditement to bee true, then when hee is arraigned, no twelue men go vpon him, there resteth but the Iudges sentence of the paine of death.

If he plead not guilty, as commonly all Theeues, Robbers and Murtherers doe, though they haue confessed the fact before the Iustice of the Peace that examined them, though they be taken with the manner, which in Latine they call in flagranti crimine, howsoeuer it be, if hee plead there not guilty, the Clarke asketh him how he will bee tryed, and telleth him he must say, by God and the Country, for these be the words formall of his tryall after inditement, and where the Prince is party: if the Prisoner say so, I will be tryed by God and the Country, then the Clarke replyeth, Thou hast béene indited of such a crime &c. Thou hast pleaded not guilty, being asked how thou wilt bee tryed, thou hast answered by God and by the Country. Lo, these honest men that become héere, bee in the place and stead of the Country: and if thou hast any thing to say to any of them, look vpon them well and now speake, for thou standest vpon thy life and death. Then calleth he in the first Iuror. B.C. come to the Booke, and so hee giueth him an oath to goe vprightly betwixt the Prince and the prisoner, &c. If the prisoner obiecteth nothing against him, he calleth another, and so another, till there be twelue or aboue: and for the most part the Prisoner can say nothing against them, for they are chosen but

but for that day, and are vnknowne to him, nor they know not him, as I said, being substantiall Yeomen that dwell about the place, or at least in the hundred, or neere where the Felony is supposed to bee committed, men acquainted with daily labour and trauell, and not with such idle persons as be ready to doe such mischiefes.

When the Enquest is full, and the Prisoner hath obiected nothing against them, as indeed seldome he doth, for the cause aboue rehearsed: The Clarke saith to the Cryer, counte, (in French as ye would say reckon) and so nameth all those that be on the Quest. The Cryer at euery name cryeth aloud, one, then two, three, foure, and so till the number be full of twelue or more, and then saith good men and true: and then saith aloud: If any can giue euidence, or can say any thing against the Prisoner, let him come now, for he standeth vpon his deliuerance. If no man come in, then the Iudge asketh who sent him to Prison, who is commonly one of the Iustices of Peace: he (if he be there) deliuereth vp the Examination which he toke of him, and vnderneath the names of those whom he hath bound to giue euidence: although the Malefactor hath confessed the crime to the Iustice of the Peace, and that it appeare by his hand and confirmation, the twelue men will acquit the Prisoner, but they which should giue euidence pay their Recognizance. Howbeit this doth seldome chance, except it be in small matters, and where the Iustice of Peace who sent the prisoner to the gaole is away. If they which be bound to giue euidence come in, first is read the examination, which the Iustice of Peace doth giue in, then is heard (if hee bee there) the man robbed what hee can say, being first sworne to say the truth, and after the Constable, and as many as were at the apprehension of the Malefactor: and so many as can say any thing, being sworne one after another to say truth. These be set in such a place as they may see the Iudges and the

Iuſtices, the Enqueſt & the Priſoner, and heare them, and be heard of them all. The Iudge after they be ſworne, aſketh firſt the party robbed, if he know the Priſoner, and biddeth him looke vpon him: hee ſaith yea, the Priſoner ſometime ſaith nay. The party purſuant gineth good enſignes, verbi gratia, I know thée well enough, thou robbedſt me in ſuch a place, thou beatedſt me, thou tokeſt my horſe from me, and my purſe, thou hadſt then ſuch a Coate, and ſuch a man in thy company: The Théefe will ſay no, and ſo they ſtand a while in altercation, then hée telleth all that he can ſay: after him likewiſe al thoſe who were at the apprehenſion of the priſoner, or who can giue any indices or tokens, which we call in our language euidence againſt the Malefactour. When the Iudge hath heard them ſay enough, hee aſketh if they can ſay any more: If they ſay no, then he turneth his ſpéech to the Enqueſt. God men (ſaith he) ye of the Enqueſt, ye haue heard what theſe men ſay againſt the Priſoner, you haue alſo heard what the priſoner can ſay for himſelfe, haue an eye to your oath, & to your duty, & do that which God ſhal put in your minds to the diſcharge of your conſciences, and marke well what is ſaid. Thus ſometime with one Enqueſt is paſſed to the number of two or thrée priſoners. For if they ſhould be charged with more, the Enqueſt wil ſay, my Lord, we pray you charge vs with no more, it is enough for our memory. Many times they are charged but with one or two. At their departing, they haue in writing nothing giuen them but inditement, the Clarke repeating to them the effect of it, & ſhewing more, that if they find him guilty, they ſhall enquire what goods, lands, and tenements the ſaid perſon had at the time of the felony committed: and if they find any, they ſhall bring it in: if none, they ſhall ſay ſo. If they find him not guilty, they ſhall enquire whether he fled for felony or no.

And there is a Baylife to waite vpon them, and to ſée that

that no man doe ſpeake with them, and that they haue neither bread, drinke, meat, nor fire brought to them, but there to remaine in a chamber together til they agree. If they be in doubt of any thing that is ſaid, or would heare againe ſome of them that giue euidence, to interrogate them more at full, or if any that can giue euidence came late: it is permitted that any that is ſworne to ſay the truth, may be interrogated of them to enforme their conſciences. This is to be vnderſtood, although it will ſeeme ſtrange to all nations, that doe vſe the ciuill Law of the Roman Emperours, that for life and death there is nothing put in writing but the inditement only. All the reſt is done openly in the preſence of the Iudges, the Iuſtices, the enqueſt, the priſoner, and ſo many as will or can come ſo neere as to heare it, and all depoſitions and witneſſes giuen aloud, that all men may heare from the mouth of the depoſitors and wittneſſes what is ſaid. As of this, ſo is it of all other priſoners after the ſame ſort. By that time that the enqueſts for the priſoners, bee diſpatched, it is commonly dinner time, the Iudges and Iuſtices go to dinner, and after dinner do returne to the ſame place: if the enqueſt be not readie for the priſoners, they go to ſome other enqueſts of Niſi prius, which bee ciuill matters and priuate, to driue out the time. The enqueſts haue no ſooner agreed vpon their charge one way or other, but they tell the Bayliffe, and pray to be heard, and conſidering that they be by themſelues, all this while as Priſoners, as I ſaid before, it is no maruell though they make expedition. The Priſoners be ſent for againe to the Bar, the Enqueſt which hath agréed, is called for, each one of the Iurie by his name, to which hee anſwereth. Then the Clarke aſketh if they be agréed, and who ſhall ſpeake for them, one or more ſaith yea, hee that ſpeaketh for them all is called the foreman, and commonly it is hee that is firſt ſworne: then the Priſoner is bidden

bidden to hold vp his hand. The Clarke saith vnto him: Thou art indicted by the name of A. of such a place, &c. being therefore arraigned thou pleadest thereto not guilty, being asked how thou wouldst be tryed, thou saidst by God and thy Country. These honest men were giuen to thee by God and thy Prince for thy Country: Hearken what they say. Then he asketh of the Enquest, what say you? Is he guilty or not guilty? The fore-man maketh answere in one word, guilty, or in two, not guiltie: the one is deadly, the other acquitteth the Prisoner. So that neither Iudge nor Iustice hath to doe, or can reuerse, alter, and change the matter: if they say guilty. The Clarke asketh what lands, tenements, or goods the Prisoner had at the time of the felony committed, or at any time after. Commonly it is answered, that they know not, nor it shall not greatly need, for the Sherife is diligent enough to enquire of that, for the Princes and his owne aduantage, and so is the Escheator also.

Of him whom the twelue men pronounce guilty, the Iudge asketh what he can say for himselfe, if he can read, he demandeth his Clergie. For in many Felonies, as in theft of Oxen, Sheep, Money, or other such things, which be no open robberies by the high-way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Law, that for the first fault the felon shall be admitted to his Clergie, for which purpose, the Bishop must send one with authority vnder his Seale, to be Iudge in that matter at euery gayle deliuery. If the condemned man demandeth to bee admitted to his Booke, the Iudge commonly giueth him a Psalter, and turneth to what place he will. The prisoner readeth so well, as he can (God knoweth sometime very slenderly:) then he asketh of the Bishops Commissarie, legit vt clericus? The Commissary must say legit or non legit, for these be the words formall, and our men of Law be very

precise

preciſe in their words formall. If he ſay legit, the Iudge procéedeth no further to ſentence of death: if he ſay non, the Iudge forthwith, or the next day procéedeth to ſentence, which is done by word of mouth onely. Thou A. haſt béene indicted of ſuch a felony, and therefore arraigned, thou haſt pleaded not guiltie, and put thy ſelfe vpon God and thy Countrey, they haue found thée guilty, thou haſt nothing to ſay for thy ſelfe, Law is, thou ſhalt returne to the place from whence thou cameſt, from thence thou ſhalt go to the place of execution, there thou ſhalt hange till thou be dead. Then he ſaith to the Sherife, Sherife doe execution: he that claimeth his Cleargie, is burned forthwith in the preſence of the Iudges, in the brawne of his hand with a hot yron, marked with the letter T. for a thiefe, or M. for a man-ſlayer, in caſes where Cleargie is admitted, and is deliuered to the Biſhops officer to be kept in the Biſhops priſon, from whence after a certaine time by another enqueſt of Clarkes he is deliuered and let at large: but if hée bée taken and condemned the ſecond time, and his marke eſpied, he goeth to hanging. He whom the enqueſt pronounceth not guiltie, is aquitted forthwith, and diſcharged of priſon, paying the Jaylers fées, and if he know any priuate man who purchaſed his indictment, and is able to purſue it, he may haue an action of conſpiracy againſt him, and a large amends: but that caſe chanceth ſeldome.

Chap. XXVII.

Certaine orders peculiar to England; touching puniments of malefactors.

For any felony, man-ſlaughter, robbery, murther, raps and ſuch capitall crimes as touch not treaſon and læſam maieſtatem, we haue by the Law of England no other puniſhment, but to hang till they bee dead: when they bée

dead, euery man may bury them that will, as commonly they be. Heading, tormenting, dismembring either arme or legge, breaking vpon the wheele, empaling, and such cruel torments, as be vsed in other Nations by the order of the law, we haue not: and yet as few murthers committed as any where: nor it is not in the Iudges, or the Iustices power, to aggrauate or mittigate the punishment of the Law, but in the Princes onely, and his priuy Counsell, which is marualous seldome done. Yet notable murtherers, many times by the Princes commaundement after they bee hanged with corde till they be dead, bee hanged with chaines while they rot in the aire.

If the wife kill her husband, she shal be burned aliue. If the seruant kill the Master, he shall bee drawne on a hurdle to the place of execution: it is called petit treason. Impoysoners, if the person die thereof, by a new Law made in King Henrie the eights time, shall bee boyled to the death: but this mischiefe is rare, and almost vnknowne in England. Attempting to impoyson a man, or laying a waite to kill a man, though he wound him dangerously, yet if death follow not, it is no felony by the Law of England, for the Prince hath lost no man, and life ought to bee giuen wes say, but for life onely.

And a gaine, when a man is murdred, all be principals e shall die, euen he that doth but hold the candle to giue light to the murtherers. For mitigation and moderation of paines, is but corruption of Iudges, as we thinke. Likewise, torment or question, which is vsed by the order of the ciuill law, and custome of other Countries, to put a malefactor to excessiue paine, to make him confesse of himselfe, or of his fellowes, or complices, it is not vsed in England, it is taken for seruile. For how can he serue the Common-wealth after as a free man who hath his body

it ans. no end of punishment.

bodie so haled or tormented, if hee bee not found guilty, and what amends can be made him? And if he must dye, what crueltie is it so to torment him before? Likewise, confession by torment is estéemed for nothing, for if hee confesse at the iudgement, the tryall of the 12. goeth not vpon him: if hee deny the fact: that which hee said before hindreth him not. The nature of English-men is to neglect death, to abide no torment: And therefore hee will confesse rather to haue done any thing, yea to haue killed his owne father than to suffer torment: for death our Nation doth not so much estéeme as a méere torment. In no place shall you sée Malefactors goe more constantly, more assuredly, and with lesse lamentation to their death than in England.

Againe, the people not accustomed to sée such cruell torments will pittie the person tormented, and abhorre the Prince and the Iudges, who should bring in such cruelty amongst them, and the twelue men the rather absolue him. There is an old Law of England, that if any Iayler shal put any prisoner being in his custody to any torment, to the intent to make him an approuer, that is to say, an accuser, or Iudex of his complices, the Iayler shal die therfore as a Felon. And to say the truth, to what purpose is it to vse torment? For whether the Malefactor confesse or no, and whatsoeuer he saith, if the Enquest of twelue doe find him guilty, hee dyeth therefore without delay. And the malefactor séeing there is no remedy and that they be his Country men, and such as he hath himself agréed vnto, if they do find him worthy of death, yéelds for the most part vnto it, and doth not repine, but doth commodate himselfe to aske mercy of God.

The nature of our Nation is frée, stout, haulty, prodigall of life and bloud: but contumely, beating, seruitude, and seruile torment, and punishment, it will not abide. So in this nature and fashion, our ancient Princes, and

Legiſlators haue nouriſhed them as to make them ſtout-hearted, couragious, and ſouldiers, not Villaines and Slaues, and that is the ſcope almoſt of all our Policie.

The twelue as ſoone as they haue giuen their Verdict, are diſmiſſed to goe whether they will, and haue no manner of commoditie and profit of their labour, e Verdict, but onely doe ſeruice to the Prince and Common-wealth.

Chap. XXVIII.

Of Treaſon, and the tryall which is vſed for the higher Nobility and Barons.

THe ſame order touching tryall by enqueſt of twelue men is taken in treaſon, but the paine is more cruel. Firſt to be hanged, taken downe aliue, his bowels taken out, and burned before his face, then to bee beheaded, and quartered, and thoſe ſet vp in diuers places. If any Duke, Marques, or any other of the degrées of a Baron, or aboue, Lord of the Parliament be appeached of treaſon, or any other capitall crime, hée is iudged by his Peeres and Equals: that is, the Peomaurie doth not goe vpon him, but an Enqueſt of the Lords of the Parliament, and they giue their voyce, not one for all, but each ſeuerally as they doe in Parliament, being at the youngeſt Lord. And for Iudge one Lord ſitteth, who is Conſtable of England for that day. The iudgement once giuen, hee breaketh his ſtaffe, and abdicateth his Office. In the reſt there is no difference from that aboue written.

THE

THE THIRD BOOKE.

CHAP. I.

Of that which in other Countries is called Appellation, or Prouocation, to amend the iudgement of ſentence definitiue, which is thought vniuſtly giuen in cauſes Criminall.

IF the Enqueſt of twelue men doe ſéeme to the Iudges and the Iuſtices, to haue gone too violently againſt the euidence giuen in matters Criminall, either it is, that vpon ſlender euidence they haue pronounced him guiltie, whom the Iudges and moſt part of the Iuſtices thinke by the euidence not fully proued guiltie, or for ſome other cauſe, doe thinke the perſon rather worthy to liue than dye. The Enquеſt is neuertheleſſe diſmiſſed: but when the Iudges ſhould pronounce the ſentence of death vpon the perſon found guilty, he will deferr it, which is called, to reprieue the Priſoner, (that is to ſay, to ſend him againe to Priſon) and ſo declare the matter to the Prince, and obtayneth after a time for the Priſoner his pardon: and as for prouocation or appeal, which is vſed ſo much in other Countries, it hath no place in England, after ſentence giuen by the twelue, whereby the perſon is found guilty or not guilty: but, without that reprieuing, the ſentence is ſtraight put in execution by the Sheriſe.

And

And if they eyther eſcape, or dye another death, the ſhe-
riſe eſcapeth not to pay a great fine and ranſome at the
Princes mercie: if hauing pregnant euidence, neuerthe-
leſſe, the twelue doe acquite the Malefactor, which they
will doe ſometime, and eſpecially if they perceiue eyther
one of the Iuſtices or of the Iudges, or ſome other man
to purſue too much, and too malicioully the death of the
priſoner, and do ſuſpect ſome ſubornation of the witnes,
or of them which doe giue euidence, and ſometime if they
perceiue the Iudge would haue the priſoner eſcape, and
in repeating the euidence doe giue them thereof ſome
watch-word. But if they doe (as I haue ſaid) pronounce
not guiltie vpon the priſoner, againſt whom manifeſt
Witneſſe is brought in, the priſoner eſcapeth: but the
twelue not only rebuked by the Iudges, but alſo threat-
ned of punihſment: and many times commanded to ap-
peare in the Starre Chamber, or before the Priuy Coun-
cell for the matter. But this threatning chanceth oftner
then the execution thereof, and the twelue anſwere with
moſt gentle words, they did it according to their conſci-
ences, and pray the Iudges to be good vnto them, they did
as they thought right and as they accorded all, and ſo it
palleth away for the moſt part. Yet I haue ſéne in my
time (but not in the reigne of the King now) that an En-
queſt for pronouncing one guiltie of Treaſon contrary to
ſuch euidence as was brought in, were not onely impri-
ſoned for a ſpace, but a huge fine ſet vpon their heades,
which they were fain to pay: An other Enqueſt for acqui-
ting another, beſide paying a fine of money, put to open
ignomine and ſhame. But thoſe doings were euen then
of many accounted very violent, tyrannicall, and contra-
ry to the liberty and cuſtome of the Realme of England.
Wherefore it commeth very ſeldome in vſe, yet ſo much
at a time the Enqueſt may bee corrupted, that Prince
may haue cauſe with iuſtice to puniſh them: For they are
men

men, and ſubiect to corruption and partiality, as others be.

Chap. II.

What remedie is, if the ſentence be thought vniuſtly giuen.

In cauſes Ciuill there is another order: for if after the matter bee pleaded to the iſſue, and the twelue men thereupon impaneled, the euidence brought and pleaded before them on both parties, the twelue ſéeme to be partiall, and to haue giuen ſentence contrary to the euidence ſhewed vnto them, the partie grieued may bring againſt them; and the partie for whom the ſentence is giuen, a Writ of attaint: and whereas before vpon the firſt Queſt commonly they ſhall be Yeomen, now vpon this attaint muſt go foure and twentie Gentlemen dwelling within the ſhire, and twelue at the leaſt of the hundreth where the Land lyeth. The matter is pleaded againe before the ſame Iudges. The partie Defendant is not onely now he who claymeth the Land, but alſo all and euery of the Yeomen, who by their verdict did giue it him.

There muſt in the attaint no more euidence bee brought in, but onely that which was brought in and alledged before the firſt Enqueſt. And if this ſecond Enqueſt of foure and twenty Gentlemen doe adiudge as the firſt did, the Plaintife ſhall not only loſe the Land, but alſo pay a fine to the Prince, & damages to the partie. If this ſecond Enqueſt doe find that the firſt Enqueſt haue gone partially, and againſt the Euidence brought in before them, the firſt Enqueſt is called attainted, and accounted as periured and infamed. The Prince had before, the waſte of all Lands and Poſſeſſions with other puniſhments, which at this preſent by a Law made by Parliament, in the time of King Henry the Eight is abolished, and now by that Law or Act of Parliament, beſide other puniſh-

punishment, each of the Quest attaynted payeth vnto the Prince & party, fiue pound, if it be vnder forty pounds: and if aboue, then twenty pounds. Attaints be very seldome put in vre, partly because the Gentlemen will not mate to slander and deface the honest Yeomen their Neighbours: so that of a long time, they had rather pay a meane fine then to appeare and make the Enquest. And in the meane time they will intreat so much as in them lyeth, the parties to come to some composition and agreement among themselues, as lightly they doe except eyther the corruption of the Enquest bee too euident, or the one partie is too obstinate and head-strong. And if the Gentlemen doe appeare, gladlier they will confirme the first sentence, for the causes which I haue said, then go against it. But if the corruption be too much euident, they will not stick to attaint the first Enquest: yet after the Gentlemen haue attainted the Yeomen, if before the sentence bee giuen by the Iudge (which ordinarily for a time is deferred) the parties be agréed, or one of them be dead, the attaint ceaseth.

If at any time before the sentence bee giuen or put in execution, there be found some such error in the Writ, in the Processe, or forme (as our Lawyers be very precise & curious of their formes) that it may bee reuocable, it is brought a fresh to the disputation by a Writ of Error, & all that is done reuersed, but that is common to all other Countries, where the Ciuil Law is vsed, which they call de nullitate processus, and serueth both in England & in other places, aswel in causes Criminall as Ciuill. Other kind of Appellation to reuoke Processes, and to make them of short, long: of long infinite: which is vsed by the Ciuil Law, we haue not in our cõmon Law of England. By supplication to the Prince, and complaint to the Chancellour vpon supposall of lesse, or lacke of euidence, or too much fauour in the Country, and power of the Aduersary

uerſarie, there is in our Countrey, as well as theirs both ſtopping and prolonging of Juſtice. For what will not buſie heads & louers of trouble, neuer being ſatiſfied, inuent in any Country to haue their deſire, which is to vex their Neighbours, and to liue alwayes in diſquiet? Men euen permitted of God like flyes, and lice, and other vermine, to diſquiet them who would employ themſelues vpon better buſines and more neceſſary for the Common-wealth. Theſe men are hated, and feared of their Neighbours, loued and aided of them which gaine by Proceſſe, and way fat by the expence and trouble of other. But as theſe men ordinarily ſpend their owne thrift, and make others againſt their wils to ſpend theirs: ſo ſometime being throughly knowne, they doe not only liue by the loſſe like euill Husbands, but beſide rebuke and ſhame, by the equity of the Prince and Courts Soueraigne, they come to be extraordinarily puniſhed, both corporally, and by their Purſe, which thing in my minde is as Royall and Princely an Act, & ſo beneficiall to the Common-wealth, as in ſo ſmall a matter a King or Quéene can doe, for the repoſe and good education of their Subiects.

Chap. III.

Of that which in England is called Appeale, in other places Accuſation.

If any man hath killed my Father, my Son, my Wife my Brother or next Kinſman, I haue choice to cauſe him to bée indited, giuing information to the Enqueſt of Enquirie, (although he chance to eſcape the Conſtable or Juſtices hands, and therefore not to bee apprehended) and thereupon to procure him to bee out-lawed, or elſe within a yeare and a day I may enter my Appeale, that is, mine accuſations againſt him: If I began firſt to purſue him by information or denunciation to enditement

I am now no partie but the Prince, who for his dutie to God and his Commonwealth and Subiects, muſt ſée Iuſtice executed againſt all Malefactors and Offenders againſt the Peace, which is called Gods and his, and doth in ſuch manner as I haue ſaid before. If I leaue that and will appeale, which is, proffer my Accuſation againſt him who hath done to me this iniury, the Defendant hath this aduantage to put himſelfe to the Iurie, which is, to that which before is ſaid to haue that Iſſue and tryall by God and his Country, wherof the faſhion I haue at large declared: or to demand the tryall by battle, wherein both the parties muſt either combate in perſon, or elſe finde other for them, who be called in our Law Champions, or Campions, ſome doe enterprete them ἀθλητὰς, becauſe they be men choſen, fat, luſtie, fit for the feate, or as the French doe terme them Adroicts aux armes. Which ſhall fight it out by μονομαχία, or as now they doe call it Duellum, or the Campe, which ſhall haue all things equall: but according as Mars giueth the victory, ſo the Law is iudged, the one as peractus reus, the other as calumniator, to ſuffer the paine of death. So that by the great Aſſiſe there is no appellation but death or life to the Defendant, but this is more dangerous and equall, for the one or the other muſt dye.

So is it not in the grand Aſſiſe, for the reus or Defendant is onely in danger of death. Short it is, from day to Sunne ſet, the quarrell is ended, or ſooner, who hath the better fortune. This ſéemeth very Military (as in manner all our policy of England) and to haue as ſmall to do with Lawyers, as with Phiſicians, quickly to diſpatch, and for the reſt to returne, each man to his buſineſſe to ſerue the Common-wealth in his vocation. The Popes of Rome, and men of the Church, who of long time haue had dominion in our conſciences, and would bring things to a more moderation, haue much deteſted this kinde of

try

tryall and iudgement, as reason is euery man misliketh that which is not like to his Education, and cold reasoning by Theologie and Philosophie: they (I say) much mislike many things done necessarily in hote pollicy.

At the least a Common-wealth Military must aduenture many things to kéepe it in quiet, which cannot séeme so precisely good to them which dispute thereof in the shadow and in their studies. Howsoeuer it be, this kind of tryall a long time hath not béene vsed. So that at this time we may rather séeke the experiences of it out of our Histories of time passed, then of any view or sight thereof, of them which are now aliue. Neuerthelesse the Law remayneth still, and is not abolished, and if it shall chance the Murtherer or Man-slayer (the one wée call him that lyeth in waite, and as they terme it in French de guit appendant, killeth the man, the other who by casuall falling out and sodaine debate and choler doth the same which way soeuer it be done) if hee that hath slaine the man hath his pardon of the Prince as occasion or the fauour of the Prince may so present that he may haue it, yet the partie grieued hath these two remedies, I say to require Iustice by grand Assise, or battle vpon his appeale & priuate reuenge, which is not denyed him. And if the Defendant either by great Assise or battle be conuinced vpon that Appeale, he shall dye notwithstanding the Princes pardon. So much fauourable our Princes and the Law of our Realme is to Iustice and to the punishment of bloud violently shed.

Chap. IIII.

Of the Court of Starre-chamber.

There is yet in England another Court, of the which that I can vnderstand there is not the like in any other Countrey. In the Tearme time (the Tearme time as I haue herelofore shewed) I call the time and

those dayes when the Law is exercised in Westminster Hall, which as I haue said, is but at certaine times and Termes) euery Weeke once at the least (which is commonly on Fridayes, and Wednesdayes, and the next day after that the Terme doth end) the Lord Chancellour, and the Lords, and other of the Priuy Councell, so many as will, and other Lords and Barons which bee not of the Priuy Councell, and bee in the Towne, and the Iudges of England, specially the two chiefe Iudges, from nine of the clocke till it bee eleuen, doe sit in a place which is called the Starre Chamber, either because it is full of windowes, or because at the first all the roofe thereof was decked with Images or Starres gilded. There is plaints heard of riots. Riot is called in our English term or speech, where any number is assembled with force to do any thing: and it had the beginning, because that our men being much accustomed eyther in forraine Warres in France, Scotland, or Ireland, or being ouermuch exercised with Ciuill Warres within the Realme (which is the fault that falleth ordinarily amongst Bellicous Nations) whereby men of Warre, Captaines and Souldiers become plentifull: which when they haue no externe seruice wherewith to occupie their busie heads and hands accustomed to fight and quarrell, must néeds séeke Quarrels and Contentions amongst themselues, and become so readie to oppresse right among their Neighbours, as they were wont before with prayse of Manhood to bée in resisting iniury offered by their Enemies. So that our Nation vsed hereunto, and vpon that more insolent at home, and not easie to be gouerned by Law and Politick order, men of power beginning many frayes, and the stronger by factions and parties offering to much iniury to the weaker, were occasions of making good Lawes.

1 First of retayners, that no man shuld haue aboue a num-
2 ber in his Liuery or retinue. Then of the enquiry of routs

and

and riots at euery Sessions, and of the Law whereby it is prouided that if any by force or by riot enter vpon any Possessions, the Iustices of the Peace shall assemble themselues, and remoue the force, and within certaine time enquire thereof.

And further, because such things are not commonly done by the meane men, but such as be of power & force, and be not to be dealt withall of euery man, nor of meane Gentlemen: if the Ryot be found & certified to the Kings Counsell, or if otherwise it be complayned of, the party is sent for, and he must appeare in the Star-chamber: séeing (except the presence of the King onely, as if it were Maiestie of the whole Realme before him, being neuer so stout, he will be abashed: and being called to answere (as he must come of what degrée soeuer hee be) hée shall be so charged with such Grauity, with such Reason, and Remonstrance, and of those chiefe Personages of England, one after another handling him on that sort, that what courage soeuer he hath, his heart will fall to the ground, and so much the more, when if he make not his answere the better, as seldome he can in so open violence, he shall be commanded to the Fléete, where hée shall bée kept in Prison in such sort as these Iudges shall appoint him, and lye there till he be weary aswell of the restraint of his libertie, as of the great expences, which hee must there sustayne, and for a time be forgotten, whiles after long suit of his friends, hee will bee glad to bee ordered by reason. Sometime as his deserts bee, hee payeth a great fine to the Prince, besides great costs and dammages to the partie, and yet the matter wherefore he attempted this Ryot and Violence, is remitted to the Common Law. For
" that is the effect of the Court, to bridle such stout Noble-
" men, or Gentlemen which would offer wrong by force
" to any manner men, and cannot bee content to demand
" or defend the right by order of Law. This Court began

long

long before, but tooke augmentation and authoritie at that time that Cardinall Wolsey Archbishop of Yorke was Chancellour of England, who of some was thought to haue first deuised that Court, because that hee after some intermission by negligence of time, augmented the authoritie of it, which was at that time marueilous necessarie to doe to represse the insolency of the Noblemen & Gentlemen of the North parts of England, who being far from the King and the seat of Justice, made almost as it were an ordinary War among themselues, and made their force their Law, banding themselues with their Tenants, and Seruants, to doe or reuenge iniury one against another as they listed. This thing seemed not supportable to the Noble Prince Henry the Eight: and sending for them one after another to his Court, to answere before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and béene well disciplined as well by words as by fléeting a while, and thereby their Purse and courage somewhat asswaged they began to range themselues in order, and to vnderstand that they had a Prince who would rule his Subiects by his Lawes and obedience. Sith that time this Court hath bin in more estimation, and is continued to this day in manner as I haue said before.

The Iudges of this Court are the Lord Chancellour, the Lord Treasurer, all the Kings Maiesties Counsell, the Barons of this Land.

The Officers therein are a Clarke, three Atturnies, an Examiner.

The Clarke kéepeth the Records, Rules, Entries, Orders, and Decrées, made in this Court.

The three Atturnies are for the Plantife, and for the Defendant to frame their complaints, and answeres, and make the matter apt to be heard for the Lords.

The Examiner taketh the Depositions of the Wit-

nesses

neſſes of both ſides, to the proofe or diſproofe of the cauſe.

The order of proceeding to iudgement is by aſſent of voyces, and open yelding their mind in Court, the maior part being preferred for ſentence.

The puniſhment moſt vſuall, is Impriſonment, Pillory, a Fine, and many times both fine & Impriſonment.

The Proceſſe is a Subpena, an Attachment, a Proclamation of Rebellion, and a Commiſſion of Rebellion.

This Subpena is in manner of a Libell or Precept.

The Proclamation and Commiſſion of Rebellion ſerueth when the partie is ſtubborne, hauing made contempt, and commeth not in by the former Proceſſe.

The Meſſengers of this Court are the Warden of the Fléet: or the Sergeants at Armes.

The matters belonging moſt commonly, are by Statutes, as is taking away of Maids within age againſt Parents or Guardians will. See An. 4. & 5. Phil. & Mariæ, cap. 8. All notable Forgeries, counterfetting Letters, or ptiuy Tokens. See Hen. Anno 33. cap. 1. Anno 5. Eliz. cap. 11. ſlandering of Nobles, and ſeditious newes. See R. 2. Anno 2. cap. 5 Anno 1. & 2. Phil. & Mariæ cap. 2. Anno 2. 3. Eliz. cap. 7. All notable Riots and vnlawfull Aſſemblies. See Anno 1. Eliz. cap. 17. And all the Titles of Ryots in Raſtals Abridgement, all notable Deceits, and all kind of Cozenage, &c.

Chap. V.

Of the Courts of Wards and Liueries.

He whom we call a Ward in England, is called in Latine pupillus, and in Greeke ὀρφανος. The Gardian is called in Latine tutor, in Greeke ἐπίτροπος. A Ward or Infant is taken for a child in baſe age, whoſe Father is dead. The Romans made two diſtinctions, pupillum & minorem, the one fourteene yeere olde, the other was ac-

accounted from thence to fiue and twentie. And as pupillus had tutorem, so minor had curatorem, till he came to the age of fiue and twentie. These Tutors or Curators were accountable for ỳ reuenues of the Pupils, & Minors Lands, and great prouision, and many lawes and orders be made for them in the Bookes of the Ciuill Law, for rendring iust and true accounts. So that to be a Gardian or Tutor was accounted among them to bee a charge or trouble, a thing subiect to much encumbrance and small profit, so that diuers meanes were sought for, to excuse men from it. With vs this is cleane contrary, for it is reckoned a profit to haue a Ward. For the Lord of whom the Ward doth hold the Land, so sone as by the death of the Father the child falleth Ward vnto him, hee seaseth vpon the bodie of the Ward, and his Lands, of which (so that hee doth nourish the Ward) hee taketh the profits without accounts. And beside that offering to his Ward conenable Marriage without disparagement before the age of one and twentie yéares if it bee a man, of fourteene if it be a woman. If the Ward refuse to take
" that Marriage, he or she must pay the value of the Mar-
" riage, which is commonly rated according to the profit
" of his Lands. All this while I speake of that which is called in French garde noble, that is, of such as hold Lands of others by Knights Seruice, for that is another kind of Seruice, which we call in French gard returier, we call it gard in socage, that is of such as doe not hold by Knights Seruice, but by tenure of the Plough. This Wardship falleth to him who is next of the kinne, and cannot inherit the Land of the Ward, as the Vncle by the Mothers side, if the Land doe descend by the Father, and of the Fathers side, if the Land descend by the Mother. This Gardian is accountable for the reuenues, and profits of the Land, as the Tutor by the Ciuill Law to the Ward or Pupill so sone as he is full of age.

The

The man is not out of Wardſhip by our Law, till one and twentie yeare old, from thence he is reckoned of full age, as well as in the Roman lawes at fiue and twentie. The woman at fourtéene is out of Ward, for ſhé may haue a huſband able to doe the Knights ſeruice, ſay our Bookes. And becauſe our wiues be in the power (as I ſhall tell you héereafter) of their huſbands, it is no reaſon ſhé ſhould be in two diuers guards.

Many men doe eſtéeme this wardſhip by Knights ſeruice very vnreaſonable and vniuſt, and contrarie to nature, that a fréeman and Gentleman ſhould be bought and ſold like an Horſe or an Oxe, and ſo change Gardians as Maſters and Lords: at whoſe gouernment not onely his body but his lands and his houſes ſhould be, to be waſted and ſpent without accounts, and then to marrie at the will of him, who is his naturall Lord, or his will who hath brought him to ſuch as he likes not peraduenture, or elſe to pay ſo great a ranſome. This is the occaſion they ſay, why many Gentlemen bée ſo euill brought vp touching vertue and learning, and but onely in daintineſſe and in pleaſure: and why they be married very young, and before they be wiſe, and many times do not greatly loue their wiues. For when the Father is dead, who hath the naturall care of his child? not the Mother, nor the Vncle nor the next of kinne, who by all reaſon would haue moſt naturall care for the bringing vp of the infant and minor, but the Lord of whom he holdeth his Land in Knights ſeruice, bé it the King or Quéene, Duke, Marqueſſe, or any other, hath the gouernment of his bodie, and marriage, or elſe who that bought him at the firſt, ſecond, or third hand. The Prince as hauing ſo many, muſt néeds giue or ſell his Wardes away to other, and ſo hé doth. Other doe but ſéeke which way they may make moſt aduantage of him, as of an Oxe, or other Beaſt. Theſe all (ſay they) haue no

naturall care of the Infant, but of their owne gaine, and especially the buyer will not suffer his ward to take any great paines, either in studie or any other hardnesse, least he should bee sicke and die, before hee hath married his daughter, sister, or cousen, for whose sake he bought him, and then all his money which he paid for him should bee lost. So he who had a Father which kept a good house, and had all things in order to maintaine it, shall come to his owne, after he is out of wardship, woods decayed, houses fallen downe, stocke wasted and gone, Lands lent forth, and plowed to the barren, and to make amends, shall pay yet one yeares rent, for reliefe, and sue ouster le maine, beside other charges, so that not of many yeares, and peraduenture neuer he shall be able to recouer, and come to the estate where his Father left it. This as it is thought was first granted vpon a great extremitie to K. Henry the third for a time vpon the warre which he had with the Barons, and afterward increased, and multiplied to more and more persons & grieuances, and will be the decay of the nobilitie and libertie of England. Other againe say, the ward hath no wrong, for either his father purchased the Land, or it did not discend vnto him from his ancestors with his charge. And because he holdeth by Knights seruice, which is in armes and defence seeing that by age he cannot do that whereto he is bound by the Land, it is reason he answere that profit to the Lord, whereby he may haue as able a man to do the seruice. The first knights in Rome, those that were chosen equites Romani had equum publicum, on which they serued an that was at the charge of the widowes & wards as appeareth by Titus Liuius, because that those persons could not doe bodily seruice to the Common wealth. Wherefore this is no new thing, but thought reasonable in that most wise commonwealth and to the prudent King Seruius Tullius. As for the education of our com-

mon

mon-wealth, it was at the firſt Militarie, and almoſt in all things the ſcope and deſigne thereof is Militarie. Yet was it thought moſt like, that Noblemen, good Knights, and great Captaines, would bring vp their Wards in their owne Feates and Vertues, and then marry them into like race and ſtocke, where they may find and make friends. Who can better looke to the education, or hath better ſkill of the bringing vp of a Gentleman, than hee who for his higher Nobilitie hath ſuch a one to hold of him by Knights Seruice, or would doe it better then hee that looketh or may clayme ſuch Seruice of his Ward, when age and yeares will make him able to doe. That which is ſaid that this manner of Wardſhip began in the time of King Henrie the Third, cannot ſeeme true. For in Normandie and other places of France the ſame order is.

And that Statute made in King Henrie the Thirds time touching Wards, to him that will weigh it well, may ſeeme rather a qualification of that matter, and an Argument that the faſhion of Wardſhip was long before: but of this matter another time ſhall bee more conuenient to diſpute. This may ſuffice to declare the manner of it.

The Iudge in this Court is the Maſter of the Wards.

Officers are the Atturney of the Wardes for the King.

The Surueyor, the Auditor, the Treaſurer, the Clark, two common Atturnies, inferiour Officers, alſo Meſſengers, and Purſuiuants.

The Atturney for the Wardes is alwayes for the Kings Right, and Aſſiſtant with the Maſter of the Wards.

The Surueyor is he that hath the allowing of euerie Liuerie that is ſued out.

The Auditor taketh the account, and cauſeth Proces to be made.

The Treaſurer receiueth the money due to his Maieſtie.

The Clarke is Writer of the Records, and Writer of the Decrées, Proceſſes, and Orders of the Court.

The matters of this Court are all benefites that may come vnto his Maieſty, by Guard, by Marriage, Preuiér, Seaſon, and Reliefe.

The general Proceſſe in this Court is a Commiſſion, a Proceſſe in manner of a Proclamation, warning the partie or parties to appeare before the Maſter of the Wards. More ſpeciall Proceſſe belonging to this Court, are a Diem clauſit extremum, a Deuenerunt, a melius inquirendum, a Datum eſt nobis intelligi, a Quæ Plura. Of the nature of theſe, ſée Stamfords Book of the Kings prerogatiue.

Out of this Court are the Liueries ſued, and committed to the Clarkes of the Petty-bagge, Officers in the Chancery.

When the Heire hath proued his age, and ſued his Liuery, then he muſt doe homage to that is the Deputie of the Prince for that purpoſe, and then muſt pay a fine or fée to the Lord-Priuy-Seale.

Chap. VII.

The Dutchie Court.

The Dutchie Court of Lancaſter is alſo the Kings Court of Record. In it are holden all Pleas reall & perſonall, which concerne any of the Dutchie Lands, now in his Maieſties hands and parcell of the Crowne: but ſerued in Court and Iuriſdiction.

The Iudge in this Court is the Chancellour, aſſiſted by

by the Attourney of the Dutchie for the King, the Clarke of the Court, diuers Surueyors, two common Atturnies diuers Auditours, two Aſſiſtants, the Sergeant of his Maieſtie.

The Chancellour is a Iudge of the Court, to ſée Iuſtice adminiſtred betwéene his Maieſtie and his Subiects, and betwéene partie and partie.

The Attourney is to maintayne the Kings, and is aſſiſtant to the Chancellour, and sheweth him what the Law is.

The Clarke kéepeth the Rolles and Recoords, and maketh the Proceſſe.

The Surueyors are diuers: one more principall: they ſurney the Kings Land within the Dutchie.

The Auditors are diuers: one more principall: they are to account and make the order of the Receits within the Dutchie.

The common Atturnies are for the Suitors that haue cauſe in action within the Court.

The Aſſiſtants are two Iudges at the common Law, that are to ayde them in difficult points of Law.

The Sergeant for the King, is a learned Counſellor, appointed to be of his Maieſties Counſell for his right.

There is alſo belonging to this Court a Vice-chancellour, that ſerueth for the County Palatine of Lancaſter, he maketh all originall Proceſſes within his Libertie, as doth the Lord Chancellour of England for the Chancery.

The Proceſſe of the Countie Palatine, is a Sub pœna, as in the Chancerie.

CHAP.

Chap. VII.

The Court of Requests.

This Court is the Court wherein all Suits made to his Maiesty by way of Supplication or Petition are heard and ended, neyther should it hold Plea of any matters then such. And this is called the poore mans Court, because there hee should haue right without paying any Money: and it is called also the Court of Conscience.

The Iudges in this Court are the Maisters of Requests, one for the Common Lawes, the other for the Ciuill Lawes.

The Officers in this Court, are the Register, the Examiner, three Atturnies, one Messenger or Pursuiuant.

The Examiner is hee that oppoſeth the Witnesses by Oath, and recordeth their Depositions.

The Atturnies serue for the Plaintife and Defendant to frame their Complaints and Answeres.

The Pursuiuant in an Officer in this Court, to bring any man before the Iudges whom they shall name.

The matters in this Court at this day, are almost all Suites that by colour of Equity or Supplication made to the Prince, may be brought before them: properly all poore mens Suites, which are made to his Maiestie by Supplication.

The Processes in this Court, are a Priuy Seale, Proclamation of Rebellion.

The nature of these Processes is, as was said before in the Court of Starre Chamber.

Chap.

Chap. VIII.

Of Wiues and Mariages.

The Wiues in England be as I ſaid in poteſtate maritorum, not that the Huſband hath vitæ ac necis poteſtatẽ, as the Romans had in the old time, of their Children, for that is onely in the power of the Prince, and his Lawes, as I haue ſaid before, but that whatſoeuer they haue before Mariage, as ſoone as Mariage is ſolemnized is their Huſbands, I mean of Mony, Plate, Iewels, Cattell, and generally all Moueables. For as for Land & Heritage followeth the Succeſſion, & is ordered by the Law, as I ſhall ſay hereafter: and whatſoeuer they get after Mariage, they get to their Huſbands. They neither can giue nor ſell any thing eyther of their Huſbands or their owne. There is no moueable thing is by the Law of England conſtanti matrimonio, but as peculium ſerui aut filij familias, and yet in Moueables at the death of her Huſband ſhee can claime nothing, but according as hee ſhall will by his Teſtament, no more then his Sonne can: all the reſt is in the diſpoſition of the Executors, if he dye teſtate. Yet in London and other great Cities they haue that Law and cuſtome, that when a man dyeth, his goods be deuided into three parts. One third part is imployed vpon the Burial & the Bequeſts, which the Teſtator maketh in his Teſtament. Another third part the Wife hath as her right, and the third part is the due and right of his Children equally to be deuided among them. So that a man there can make Teſtament but of one third of his goods: If he die inteſtate, the Funerals deducted, the goods be equally deuided betwéene the Wife and the Children.

By the Common Law of England if a man dye inteſtate, the Ordinary (which is the Biſhop by common intendment) ſometime the Archdeacon, Deane, or Prebendaris,

dary, by priuiledge and preſcription, doth commit the adminiſtration of the goods to the Widow or the child, or next kinſman of the dead, appointing out portiõs to ſuch as naturally it belongeth vnto, & the Ordinary by common vnderſtanding, hath ſuch grauity & diſcretion as ſhal bee fit for ſo abſolute an authoritie for the moſt part, following ſuch diuiſion as is vſed in London, eyther by thirds or halues. Our forefathers newly conuerted to the Chriſtian Faith, had ſuch confidence in their Paſtors and Inſtructors, & tok them to be men of ſuch conſcience that they committed that matter to their diſcretion: and belike at the firſt were ſuch as would ſéke no priuate profit to themſelues thereby: that being once ouerpayned hath ſtill ſo continued. The abuſe which hath followed was in part redreſſed by certaine Acts of Parliament made in the time of King Henry the eight, touching the probate of Teſtaments, committing of adminiſtration, and mortuaries. But to turne to the matter which we now haue in hand, the Wife is ſo much in the power of her Huſband, that not onely her goods by Mariage are ſtraight made her Huſbands, & ſhe loſeth all her adminiſtration which ſhee had of them: but alſo where all Engliſhmen haue name and ſirname, as the Romans had, Marcus Tullius, Caius Pompeius, Caius Iulius, whereof the name is giuen to vs at the Font, the ſirname is the name of the Gentilitie and ſtocke which the Sonne doth take of the Father alwayes, as the old Romans did, our Daughters ſo ſoone as thy be marryed loſe the ſirname of their Father, and of the Family and Stock whereof they do come, and take the ſirname of their Huſbands, as tranſplanted frõ their Family into another. So that if any Wife was called before Philip Wilford by her owne name and her Fathers ſirname, ſo ſoone as ſhée is married to me, ſhee is no more called Philip Wilford, but Philip Smith, and ſo muſt ſhe write and ſigne: and as ſhée changeth Huſbands, ſo

ſhe

ſhe changeth ſurnames, called alwaies by the ſurname of her laſt huſband. Yet if a woman once marrie a Lord or a Knight, by which occaſion ſhe is called my Ladie, with the ſurname of her huſband, if he die, and ſhe take a huſband of a meaner eſtate, by whom ſhe ſhall not bee called Ladie (ſuch is the honour we do giue to women) ſhe ſhall ſtill be called Ladie with the ſurname of her firſt huſband, and not of the ſecond.

I thinke amongſt the old Romanes thoſe marriages which were made per coemptionem in manum, and per æs & libram, made the wife in manu & poteſtate viri, whereof alſo we had in our old law and ceremonies of marriage, a certaine memorie as a view and veſtigium. For the woman at the Church doore was giuen of the Father, or ſome other man of the next of kinne into the hands of the huſband, and he laid downe gold and ſiluer for her vpon the Booke, as though he did buy her, the Prieſt belike was in ſtead of Lipripens: our marriages be eſteemed perfect by the Law of England, when they be ſolemnized in the Church or Chappell, in the preſence of the Prieſt and other witneſſes. And this onely maketh both the huſband and the wife, capable of all benefits which our Law doth giue vnto them and their lawfull children. Inſomuch that if I marrie the Widow of one lately dead, and at the time of her huſbands death was with child, if the child be borne after marriage ſolemnized with mee, this child ſhall be my heire, and is accounted my lawfull ſonne, not his whoſe child it is indeed: ſo preciſely we doe take the letter where it is ſaid, pater eſt quem nuptiæ demonſtrant. Thoſe waies emeanes which Iuſtinian doth declare to make baſtards to bee lawfull children, muliers, or rather melieurs (for ſuch a Terme our law vſeth for them which be lawfull children) be of no effect in England: neither the Pope, nor Emperor, nor the Prince himſelfe neuer could there legitimate a baſtard

ſtard to enioy any benefit of our Law, the Parliament hath onely that power.

Although the wife be (as I haue written before) in manu & poteſtate mariti, by our Law, yet they be not kept ſo ſtraight as in a mew, and with a guard as they be in Italy and Spaine, but haue almoſt as much liberty as in Fraunce, and they haue for the moſt part all the charge of the houſe and houſhold (as it may appeare by Ariſtotle and Plato, the wiues of the Grekes had in their time) which is indeed the naturall occupation, exerciſe, office, and part of a wife. The husband to meddle with the defence eyther by law or force, and with all forren matters which is the natural part and office of the man, as I haue written before. And although our Law may ſeeme ſome what rigorous toward the wiues: yet for the moſt part they can handle their husbands ſo well and ſo dulcely, and ſpecially when their husbands be ſicke, that where the law giueth them nothing, their husbands at their death of their good will giue them all. And few there be that be not made at the death of their husbands, either ſole or chiefe executrices of his laſt will and Teſtament, and haue for the moſt part the gouernment of the children and their portions: except it be in London, where a peculiar order is taken by the citie much after the faſhion of the ciuill Law.

It is auoydable after the husbands death, except it be for one and twentie yeares or three liues, according to the Statute, or except they leuie a fine.

All this while I haue ſpoken only of moueable goods. If the wife be an inheritrix and bring land with her to the marriage: that land deſcendeth to her eldeſt ſonne, or is deuided among her daughters. Alſo the manner is that the land which the wife bringeth to the marriage, or purchaſeth afterwards, the husband cannot ſell nor alienate the ſame, no not with her conſent, nor ſhe her ſelfe during the marriage, except that ſhe be ſole examined by the Iudge at the common law: and if he haue no child by her and ſhe die, the land goeth to her next heires at the

common

common Law: but if in the mariage hee haue a childe by her, which is heard once to cry, whether the childe liue or die, the husband shall haue the vsufruit of her lands (that is the profit of them) during his life, and that is called the courtesie of England.

Likewise if the husband haue any Land, eyther by inheritance descended, or purchased and bought, if hée dye before the wife, shée shall haue the vsufruit of one third part of his lands. That is, she shal hold the one third part of his lands during her life as her dowry, whether hée hath child by her or no. If hee hath any children, the rest descendeth straight to the eldest: if hee hath none, to the next heire at the common Law: and if shee mislike the diuision, she shall aske to bee endowed of the fairest of his lands to the third part.

This which I haue written touching mariage, and the the right in moueables and vnmoueables, which commeth thereby, is to bee vnderstood by the common Law, when no priuate contract is more particularly made. If
" there be any priuate Pacts, Couenants and Contracts
" made before the mariage betwixt the husband and the
" wife, by themselues, by their parents, or other friends,
" those haue force to bee kept according to the firmitie and
" strength in which they are made: And this is enough of wiues and mariage.

Chap. IX.

Of Children.

Our children be not in potestate parentum, as the children of the Romanes were: but as sone as they bée puberes, which wee call the age of discretion, before that time nature doth tell they be but as it were partes parentum, that which is theirs they may giue or sell, and purchase to themselues either lands and other moueables

the Father hauing nothing to do therewith. And therfore mancipatio is clean superfluous, we know not what it is. Likewise sui hæredis complaints de inofficioso testamento or præteritorũ liberorum non emancipatorum haue no effect nor vse in our law, nor we haue no manner to make lawfull children but by Marriage, and therefore wee know not what is adoptio, nor arrogatio. The Testator disposeth in his last will his moueable goods freely, as hee thinketh mete and conuenient without controlement of wife or children. And our testimonies for goods moueable, be not subiect to the Ceremonies of the Ciuill Law, but made with all libertie and frædome, and iure militari. Of Lands, as yee haue vnderstood before, there is difference: For when the owner dyeth, his Land discendeth onely to his eldest Son, all the rest both Sons and daughters haue nothing by the Common Law, but must serue their eldest Brother if they will, or make what other shift they can to liue: except that the Father in his life time doe make conueyance, and estate of part of his Land to their vse, or else by deuise, which words amongst our Lawyers, doth betoken a Testament written, sealed and deliuered in the time of the Testator before witnesse: for without those Ceremonies a bequeast of Lands is not auayleable. But by the common Law, if he that dyeth had no Sonnes but Daughters, the Land is equally deuided amongst them, which by portion is made by agrément or by lot. Although (as I haue said) ordinarily and by the common Law, the eldest Son inheriteth all the Lands, yet in some Countries haue equall portion, and that is called gauelkind, and is in many places in Kent. In some places the yongest is sole heire: and in some places after another fashion. But these being but particular customes of certaine places, and out of the rule of common Law, do little appertaine to the disputation of the policy of the whole Realme, & may be infinite.

The

The Common-wealth is iudged by that which is moſt ordinarily & commonly done through the whole Realme.

Chap. X.

Of Bondage and Bondmen.

After that we haue ſpoken of al the ſorts of frémen, according to the diuerſitie of their eſtates and perſons, it reſteth to ſay ſomewhat of bondmen, which were called ſerui, which kinde of people and the diſpoſition of them and about them doth occupie the moſt of Iuſtinians Digeſtes, and Code. The Romanes had two kinds of Bondmen, the one which were called ſerui, and they were eyther which were bought for money, taken in Warre, left by ſucceſſion, or purchaſed by ſome other kinde of lawfull arquiſition, or elſe borne of their Bondwomen, and called vernæ: all thoſe kind of Bondmen bée called in our Law villains in groſſe, as ye would ſay immediatly bond to the perſon and his heires. Another they had (as appeareth in Iuſtinians time) which they called adſcriptitij glebæ or agri cenſiti. Theſe were not bond to the perſon, but to the Manour or place, and did follow him who had the Manours, in our Law are called Villaines regardants, for becauſe they bee as members, or belonging to the Manour or place. Neither of the one ſort nor of the other haue we any number in England. And of the firſt I neuer knew any in the Realme in my time. Of the ſecond, ſo few there be, that it is not almoſt worth the ſpeaking, but our Law doth acknowledge them in both thoſe ſorts.

Manumiſſion of that kinde of Villaines or Bondmen in England, is vſed and done after diuers ſorts, and by other, and more light and eaſie meanes than is preſcribed in the ciuill Law: and being once manumitted: hee

is not libertus manumittentis, but simply liber: howbeit, since our Realme hath received the Christian Religion, which maketh us all in Christ Brethren, and in respect of God and Christ, conseruos, men began to haue conscience to hold in captiuitie, and such extreme bondage, him whom they must acknowledge to be their brother, and as we vse to terme him a Christian, that is, who loueth in Christ, and by Christ, to haue equall portion with them in the Gospell and Saluation.

Vpon this scruple, in continuance of time, and by long succession, the holy Fathers, Monkes and Friers, in their confession, and specially in their extreame and deadly sicknesses, burdened the consciences of them whom they had vnder their hands: so that temporall men by little and little, by reason of that terror in their conscience, were glad to manumitte all their villains: but the said holy Fathers, with the Abbots and Priors, did not in like sort by theirs, for they had also conscience to impouerish and dispeople the Church so much as to manumit such as were bound to their Churches, or to the Manors which the Church had gotten, and so kept theirs still. The same did the Bishops also, till at the last, and now of late, some Bishops (to make a peece of Money) manumitted theirs, partly for argent, partly for slanders, that they seemed more cruell than the temporalty: after the Monasteries comming into temporall mens hands, haue béene occasion that now they bee almost all manumitted. The most part of Bondmen when they were, yet were not vsed with vs so cruelly, nor in that sort as the bondmen at the Roman ciuill Law, as appeareth by their Comedies: nor as in Grece, as appeareth by theirs: but they were suffered to enioy Coppy-hold land, to gain and get as other seruants, that now & then their Lords might fleece them, and take a peece of money of them, as in France the Lords doe tayle them whom they call

their

their ſubiects, at their pleaſure, and cauſe them to pay ſuch ſummes of money as they liſt to put vpon them. I thinke both in France and England, the change of Religion to a more gentle, humane, and more equall ſort, (as the Chriſtian Religion, is in reſpect of the Gentiles,) cauſed this olde kinde of ſeruile ſeruitude and ſlauerie, to be brought into that moderation, for neceſſitie, firſt to Villaines regardants, and after to ſeruitude of Lands and tenures, and by little and little finding out more ciuill and gentle meanes, and more equall to haue that done which in time of heatheneſſe, ſeruitude, or bondage did, they almoſt extinguiſhed the whole. For although all perſons Chriſtians bee brethren by Baptiſme in Ieſus Chriſt, and therefore may appeare equally free, yet ſome were, and ſtill might be chriſtened being bond and ſerue, and whom as the Baptiſme did find, ſo it did leaue them, for it changeth not ciuill Lawes nor compacts amongſt men which be not contrary to Gods Lawes: but rather maintayneth them by obedience.

Which ſeeing men of good conſcience hauing that ſcruple whereof I wrote before, haue by little and little found meanes to haue and obtayne the profit of ſeruitude and bondage which Gentility did vſe, and is vſed to this day among Chriſtians on the one part, and Turkes & Gentiles on the other part, when war is betwixt them, vpon thoſe whom they take in Battaile. Turkes and Gentiles I call them, which vſing not our Law, the one beleeueth in one God, the other in many Gods, of whom they make Images. For the Law of Ieweſ is well enough knowne, and at this day ſo farre as I can learne, amongſt all people Ieweſ bee holden as it were in a common ſeruitude, and haue no rule nor dominion as their owne prophecies doe tell, that they ſhould not haue, after that Chriſt promiſed to them, was of them refuted: for when they would not acknowledge him, obſtinately

for-

forſaking their helpe in ſoule for the life to come, and honour in this World for the time preſent, not taking the good tidings, newes, and Euangell brought to them by the great grace of God, and by the promiſe of the Prophets fructified in vs which bee Gentiles, and brought forth this humanity, gentleneſſe, honour, and godly knowledge which is ſæne at this preſent. But to returne to the purpoſe.

This perſwaſion I ſay of Chriſtians, not to make nor kæpe his brother in Chriſt, ſeruile, bond, and vnderling for euer vnto him, as a beaſt rather then a man, and the humanity which the Chriſtian Religion doth teach, hath engendred through Realmes (not nære to Turkes and Barbarians) a doubt, a conſcience, a ſcruple to haue ſeruants and bondmen, yet neceſſitie on both ſides, of the one to haue helpe, on the other to haue ſeruice, hath kept a figure or faſhion thereof. So that ſome would not haue bondmen, but adſcriptitij glebæ, and villaines regardant to the ground, to the intent their ſeruice might bee furniſhed, and that the Countrey being euill, wholſome, and otherwiſe barren, ſhould not be deſolate. Others afterwards found out the wayes & meanes, that not the men, but the Land ſhould be bond, and bring with it ſuch bondage and ſeruice to him that occupyeth it, as to carry the Lords dung vnto the fields, to plough his ground at certaine dayes, ſow, reape, come to his Court, ſweare faith vnto him, and in the end to hold the land but by copie of the Lords Court Rolle, and at the will of the Lord.

The tenure is called alſo in our Law, villaine, bond, or ſeruile tenure: yet to conſider more deepely, all Land euen that which is called moſt free Land, hath a bondage annexed vnto it, not as naturally the lower ground muſt ſuffer and receiue the water and filth which falleth from the higher ground, nor ſuch as Iuſtinian ſpeaketh of de ſeruitudinibus prædiorum ruſticorum & vrbanorum,

but

but the Land doth bring a certaine kinde of seruitude to the possessor. For no man holdeth Land simply free in England, but her of him that holdeth the Crowne of England: all others hold their Land in fee, that is, upon a faith or trust, and some seruice to be done to another Lord of a Mano^r, as his superior, and he againe of an higher Lord, till it come to the Prince, and him that holdeth the crowne.

So that if a man die, and it be found that he hath land which he holdeth, but of whom no man can tell, this is vnderstood to be holden of the Crowne, and in capite, which is much like to the knights seruice, and draweth vnto it three seruices, Homage, Ward, and Marriage: that is, he shall sweare to be his man, and to be true vnto him of whom he holdeth the land: His sonne who holdeth the land after the death of his Father, shall be married where it pleaseth the Lord.

He that holdeth his land most freely of a temporal man (for franke almes and franke marriage hath another cause and nature) holdeth by fealtie onely, which is, he shal sweare to be true to the Lord, and do such seruice as appertaineth to the land which he holdeth of the Lord.

So that all free land in England is holden in fee, or feodo, which is as much to say, as in fide, or fiducia, that is, in trust and confidence, that her shall bee true to the Lord of whom he holdeth it, pay such rents, do such seruice, and obserue such conditions as were annexed to the first donation. Thus all sauing the Prince be not veri Domini, but rather fiduciarij domini, and possessores.

This is a more likely interpretation then that which Littleton doth put in his booke, who saith that feodum idem est quod hæreditas, which it doth betoken in no language. This happeneth many times to them who bee of great witt and learning, yet not skene in many tongues, nor marke not the deduction of words which

time doth alter. Fides in Latine (the Gothes comming into Italy, and corrupting the language) was turned first into fede, and at this day in Italy they will say in fide, en fide, or ala fe. And some vncunning lawyers that would make a new barbarous Latine word, to betoken land giuen in fidem, or as the Italian saith, in fide, or fe. made it in feudum, or feodum. The nature of the word appeareth more euident in those which we call to feff, feoff, or feoffes, the one be fiduciarij possessores: or fidei commissarij: the other is, dare in fiduciam, or fidei commissum, or more latiuely, fidei committere.

The same Littleton was as much deceiued in Withernam, and diuers other old words. This Withernam, as he interpreteth veritum namium, in what language I know not: whereas in truth it is in plaine Dutch, and in our old Saxon language, Wither nempt, alterum accipere, or vicissim rapere, a word that betokeneth that which in barbarous latine is called represalia, when one taking of me a distresse, which in latine is called pignus, or any other thing, and carrying it away out of the iurisdiction wherein I dwell, I take by order of him that hath iurisdiction, another of him againe, or of some other of that iurisdiction, and doe bring it into the iurisdiction wherein I dwell, that by equall wrong I may come to haue equall right. The manner of represalia, and that we call Withernam, is not altogether one but the nature of them both is as I haue described, and the proper signification of the words doe not much differ.

But to returne thither where wee did digresse: ye see that where the persons be free, and the bodies at full libertie, and maxime ingenui, yet by annexing a condition to the Land, there is meanes to bring the owners and possessors thereof into a certaine seruitude, or rather libertinity: That the tenants beside paying the rent accustomed, shal owe to the Lord a certaine faith, duty, trust,

obe-

obedience: and (as we terme it) certaine ſeruice, as libertus, or Cliens patrono: which becauſe it doth not conſiſt in the perſons, for the reſpect in them doth not make them bond, but in the Land and occupation thereof, it is more properly expreſſed in calling the one Tenant, the other Lord of the Fée: then either libertus or cliens can doe the one, or patronus the other: for theſe words touch rather the perſons, and the office and dutie betweene them, then the poſſeſſions: but in our caſe leaning the poſſeſſion and Land, all the obligation of ſeruitude and ſeruice is gone.

Another kinde of ſeruitude or bondage is vſed in England for the neceſſity thereof, which is called Apprentice-hood. But this is onely by Couenant, and for a time, and during the time, it is vera ſeruitus. For whatſoeuer the Apprentice getteth of his owne labour, or of his Maſters occupation or ſtock, he getteth to him whoſe Apprentice he is; he muſt not lye forth of his Maſters doores, he muſt not occupie any ſtocke of his owne, nor marry without his Maſters licence, and he muſt doe all ſeruile offices about the houſe, and bee obedient to all his Maſters commandements, & ſhall ſuffer ſuch correction as his Maſter ſhall thinke méete, and is at his Maſters clothing and nouriſhing, his Maſter being bound onely to this which I haue ſaid, and to teach him his occupation, and for that he ſerueth ſome, for ſeuen or eight yeares, ſome nine or ten yeares, as the Maſters and the friends of the young man ſhall thinke méete, or can agrée altogether (as Polidore hath noted) quaſi pro emptitio ſeruo. Neuertheleſſe, that neither was the cauſe of the name Apprentice, neither yet doth the word betoken that which Polidore ſuppoſeth, but it is a French word, and betokeneth a Learner or a Scholler.

Apprendre in French is to learne, and Apprentize is as much to ſay in French (of which Tongue wee borrowed this word, and many more other) as Diſcipulus

in Latine: Likewise he to whom he is bound, is not called the Lord, but his Master, as yee would say his Teacher. And the pactions agreed upon, be but in writting, signed, and sealed by the parties, and registred for more assurance. Without being such an Apprentice in London, and serving out such a seruitude in the same City for the number of yeares agreed upon, by order of the Citie amongst them, no man being neuer so much borne in London, and of Parents Londoners, is admitted to be a Citizen or Freeman of London: the like is vsed in other great Cities of England. Besides Apprentices, others be hired for wages, & be called Seruants, or serving men and women throughout the whole Realme, which be not in such bondage as Apprentices, but serue for the time for daily Ministerie, as serui and ancillæ did in the time of Gentility, and be for other matters in liberty as full free men and women.

The Sonnes of Freemen of London are also free by birth, according to the custome,

But all Seruants, Labourers, and others not maried must serue by the yere: and if he be in couenant, hee may not depart out of his seruice without his Masters licence, and he must giue his Master warning that hee will depart one quarter of a yeare before the terme of the yeare expireth, or else hee shall bee compelled to serue out another yeare. And if any young man vnmaryed be without seruice, hee shall bee compelled to get him a Master, whom he must serue for that yeare, or else he shall be punished with stockes and whipping, as an idle Vagabond. And if any man maried, or vnmaried, not hauing rent or liuing sufficient to maintaine himselfe, doe liue lewdly, he is enquired of, and sometime sent to the Iayle, sometime otherwise punished as a sturdy Vagabond: so much our policie doth abhorre idlenes. This is one of the chiefe charges of the Iustices of Peace in euery Shire. It is taken for vngentlenesse, dishonour, and a shew of enmitie, if any Gentlemen doe take another Gentlemans seruant

(al-

(although his Maſter doe put him away) without ſome Certificate from his Maſter, either by word or writing that he hath diſcharged him of his ſeruice. That which is ſpoken of men Seruants, the ſame is alſo ſpoken of women. So that all youth that hath not ſufficient reuennes to maintaine it ſelfe, muſt needs with vs ſerue, and that after an order as I haue written. Thus neceſſity & want of bondmen hath made men to vſe freemen as bondmen to all ſeruile ſeruices: but yet more liberally and freely, and with a more equality and moderation, than in time of Gentility ſlaues and bondmen were wont to be vſed, as I haue ſaid before. This firſt and latter faſhion of temporall ſeruitude, and vpon paction, is vſed in ſuch Countries as haue left off the old accuſtomed manner of ſeruants, ſlaues, bondmen, and bondwomen, which was in vſe before they had receiued the Chriſtian faith. Some after one ſort, and ſome either more or leſſe rigorouſly, according as the nature of the people is enclined, or hath deuiſed amongſt themſelues, for the neceſſities of ſeruice.

Chap. XI.

Of the Court which is Spirituall or Eccleſiaſticall, and in the Booke of Law Court Chriſtian, *Curia Chriſtianitatis.*

The Archbiſhops and Biſhops haue a certaine peculiar Iuriſdiction vnto them, eſpecially in foure manner of cauſes: Teſtaments and legations, Tithes & Mortuaries, Partage and Adultery or Fornication, & alſo of ſuch things as appertaine to orders amongſt themſelues & matters concerning Religion. For as it doth appeare, one Anceſtors hauing the Common-wealth before mayned and ſet in frame, when they did agree to receiue the true & Chriſtian Religion, & that which was eſtabliſhed be-

before, and concerned externe policy (which their Apoſtles, Doctors, and Preachers did allow) they held & kept ſtill with that which they brought in the new. And thoſe things, in keping whereof they made conſcience, they committed to them to bee ordered and governed as ſuch things of which they had no ſkill, and as to men in whom for the holineſſe of their life and good conſcience, they had a great and ſure confidence. So theſe matters bee ordered in their Courts, & after the faſhion and manner of the Law Ciuil, or rather common, by citation, libel, conteſtationem litis, examination of witneſſes priuily, by exceptions, replications a part and in writing, allegations, matters by ſentences, giuen in writing by appellations, from one to another, as wel à grauamineas à ſentẽtia definitiua and ſo they haue other names, as Proctors, Aduocates, Aſſeſſors, Ordinaries, and Commiſſioners, &c. farre from the manner of our order in the Common Law of England, and from that faſhion which I haue ſhewed you before. Wherefore if I ſay the Teſtament is falſe and forged, I muſt ſue in the ſpirituall Law, ſo alſo if I demand a Legacie: but if I ſue the Executor or Adminiſtrator, which is he in our Law, who is in the Ciuill Law, hæres or bonorũ mobiliũ poſſeſſor ab inteſtato, for a debt which the dead ought mee, I muſt ſue in the Temporall Court. Theſe two Courts the Temporall and the Spirituall, bee ſo deuided, that whoſoeuer ſueth for any thing to Rome, or in any Spiritual Court for that cauſe or action, which may bee pleaded in the Temporall Court of the Realme, by an old Law of England, he falleth into a Præmunire, that is, he forfaiteth all his goods to the Prince, and his body to remayne in Priſon during the Princes pleaſure: and not that onely, but the Iudge, the Scribe, the Procurour, and Aſſeſſour which receiueth and doth maintayne that vſurped pleading, doth incurre the ſame danger. Whether the word præmunire doth betoken that

the

the authority and iurisdiction of the Realme is prouided for before, and defended by that Law, and therefore it hath that name præmunire or præmuniri, or because that by that Law such an attẽptor hath had warning giuen before to him of the danger, into which he falleth by such attempt, and then præmunire is barbarously written for præmunere, præmuniri (as some men haue held opinion) I will not define: the effect is as I haue declared: and the Law was first made in King Richard the Seconds time, and is the remedie which is vsed when the Spirituall Iurisdiction will goe about to incroach any thing vpon the Temporal Courts. Because this Court or forme which is called Curia Christianitatis, is yet taken as appeareth for an externe and forreine Court, and differeth from the Policie and manner of Gouernment of the Realme, and is an other Court (as appeareth by the Act & Writ of præmunire,) than Curia Regis aut Reginæ: yet at this present this Court as well as others, hath her force, power, authority, rule, and iurisdiction, from the royall Maiesty, and the Crowne of England, and from no other forreine Potentate or power vnder God, which being granted (as indeed it is true) it may now appeare by some reason that the first Statute of præmunire, whereof I haue spoken, hath now no place in England, seeing there is no pleading alibi quam in Curia Regis ac Reginæ.

I haue declared summarily as it were in a Chart or Map, or as Aristotle termeth it ὡς ἐν πίνακι the forme and manner of gouernment of England, and the Policy thereof, and set before your eyes the principall points wherein it doth differ from the Policy or gouernment at this time vsed in France, Italy, Spaine, Germanie, and all other Countries, which doe follow the Ciuill Law of the Romans, compiled by Iustinian into his Pandects & Code; not in that sort, as Plato made his Common-wealth, or Xenophon his Kingdome of Persia, nor as Sir Thomas

More

More his Vtopia, being fayned Common-wealths, such as neuer was nor shall be, vaine imaginations, fantasies of Philosophers, to occupie the time, and to exercise their wits: but as England standeth, and is gouerned at this day the eight and twenty of March, Anno 1565. in the seuenth yeere of the Reigne and Administration thereof by the most Vertuous and Noble Queene Elizabeth, Daughter to King Henry the Eight, and in the one and fiftieth yeare of mine age, when I was Ambassadour for her Maiestie, in the Court of France, the Scepter whereof at that time the noble Prince and great hope Charles Maximilian did hold, hauing then raigned foure yeares. So that whether I write true or not, it is easie to bee seene with eyes, (as a man would say) and felt with hands. Wherefore this being as a Proiect or Table of a Common-wealth truly layd before you, not fayned by putting a case: let vs compare it with Common-wealths which bee at this day in esse, or doe remayne described in true Histories, especially in such points wherein the one differeth from the other, to see who hath taken righter, truer, and more commodious way to gouerne the people, as well in Warre as in Peace. This will be no illiberall occupation for him that is a Philosopher, and hath a delight in disputing, nor vnprofitable for him who hath to doe, and hath good will to serue the Prince and Common-wealth, in giuing Counsell for the better administration thereof.

THOMAS SMITH.